



IN THE COURT OF DISTRICT JUDGE, MAYILADUTHURAI.

Present: Tmt. R. Sathia Thara, M.A., M.L.,

District Judge, Mayiladuthurai.

Tuesday, this the 07th day of July 2026.

2057 Thiruvalluvar Aandu Parapava Varudam on 23rd day of Aani Thingal

C.N.R.No. TNMY-0100-0665-2019

AS. No.40/2017

Kutralalingam

**. . . Appellant /
Plaintiff**

Vs

1. Rukmani
2. Saravanan
3. Kumar
4. Ramesh
5. Prakash
6. Susila
7. The Sub Registrar, Sirkali
8. The State rep. by the District Collector,
Nagapattinam District
9. Lalitha
10. Vijayakumari
11. Punithavathi
12. Sangari (Died)
13. Santhi
14. Senthamarai
15. Saraswathi (Died)
16. Tamilselvi
17. Kalaiselvi
18. Latha
19. Poongodi
20. Rukmani Ammal
21. Manisekar
22. Manimekalai
23. Amutha
24. Mala @ Malathi

25. Sudha
26. Ramasamy
27. Murugan
28. Mekala
29. Sadhasivam
30. Nandhini
31. Vanathi
32. Murugupandiyar
33. Raji @ Rajalakshmi
34. Bama
35. Rukmani
36. Kanthan

**... Respondents /
Defendants**

(Amended as per order in IA No. 9/2025 dated 03.07.2025)

Appeal filed by the appellant / defendant in O.S. No.36/2011 as against the decree and judgment passed in O.S. No.36/2011 dated 21.08.2017 on the file of the Additional Subordinate Court, Mayiladuthurai.

Parties in the trial court:

Kutralalingam

... Plaintiff.

Vs

1. Subramaniyan (Died)
2. Rukmani
3. Saravanan
4. Kumar
5. Ramesh
6. Prakash
7. Susila
8. Sub Registrar, Sirkali
9. The State rep. by the District Collector,
Nagapattinam District
10. Lalitha
11. Vijayakumari
12. Punithavathi
13. Sangari

14. Ponmani (Died)
15. Santhi
16. Senthamarai
17. Saraswathi
18. Tamilselvi
19. Kalaiselvi
20. Latha
21. Poongodi
22. Rukmani Ammal
23. Manisekar
24. Manimekalai
25. Amutha
26. Mala @ Malathi
27. Sudha
28. Ramasamy
29. Murugan
30. Megala

. . . Defendants.

This Appeal Suit came up for final hearing on 23.06.2026, in the presence of Thiru. R. Sivapunniyam, the learned counsel for the appellant and the Government Pleader for respondents 7 to 8, and Thiru. S. Narayanan, the learned counsel for R20 and R22 and the death of R12 and R15 recorded and the respondents 1 to 6, 9 to 11, 13,14, 16 to 19, 21, 23 to 36 called absent remained set exparte and upon hearing the arguments on both sides and perusing the records, this Court delivered the following:

JUDGMENT

Appeal filed under Order 41 Rule 1 and Section 96 of Civil Procedure Code to set aside the decree and judgment passed in OS. No. 36/2011, dated 21.08.2017 on the file of the Additional Sub Court, Mayiladuthurai with cost.

The averments in the plaint in brief is as follows:

2) The suit property is house and site originally purchased by Pazhani Mudaliyar on 02.12.1895. After his demise, his three sons Kuzhandaivel Mudaliyar, Thandapani Mudaliyar, Pitchadana Mudaliyar as legal heirs enjoyed the properties.

Plaintiff is the grand son of Pitchadana Mudaliyar. Kuzhandaivel Mudaliyar executed a will dated 17.08.1925 infavour of his four daughters Marimuthammal, Thillaiyammal @ Meenakshi, Anjalaiyammal and Nagammal inrespect of his 1/3rd share. After the demise of Kuzhandaivel Mudaliyar, his four daughters were entitled to his share. They executed a Will separately infavour of plaintiff. Mariyammal on 07.08.1977 and Thillaiyammal @ Meenakshiyammal, Anjalaiyammal, Nagammal separately executed a Will on same date 10.01.1985 infavour of Plaintiff. So, the plaintiff entitled to 1/3rd share in the suit property.

3) The other sharer Thandapani Mudaliyar's single son Govindasamy Mudaliyar died. His wife Thaiyalnayagi and daughter Thilagavathy sold their 1/3rd share infavour of 2nd defendant Rukmaniyammal and thereby 2nd defendant entitled to 1/3rd share. The 2nd defendant is the wife of 1st defendant. Th remaining 1/3rd share belongs to Pitchadana Mudaliyar. He has five sons Manicka Mudaliyar, Ramasamy Mudaliyar, Egambara Mudaliyar, Sambandam Mudaliyar and Subramaniya Mudaliyar. Pitchadana Mudaliyar died. Pitchadana Mudaliyar's 5th son is 1st defendant. Pitchadana Mudaliyar's elder son is Manicka Mudaliyar who has only one son Kaliyaperumal who died unmarried and so Manicka Mudaliyar's share devolved on other four sons of Pitchadana Mudaliyar as Manicka Mudaliyar also died. Pitchadana Mudaliyar's 2nd son is Ramasamy Mudaliyar and plaintiff is the only legal heir to him and thereby plaintiff entitled to 1/4 share in 1/3 share of the Pitchadana Mudaliyar and accordingly entitled to 1/12share. Further, plaintiff entitled to 1/3 share by virtue of Will. In total $1/3 + 1/12 = 5/12$ share belong to plaintiff. Pitchadana Mudaliyar's 3rd son Egambara Mudaliyar died and 3rd plaintiff is his only legal heir. Pitchadana Mudaliyar's 4th son Sambanda Mudaliyar also died and his legal heirs are defendants 4 to 7 and they entitled to 1/12 share. Pitchadana Mudaliyar's 5th son Subramaniya Mudaliyar, 1st defendant is entitled to 1/12 share. The defendants 1 and 2 are demolishing a portion of house in the suit property and constructed a new building and to demolish other portions and attempting to sell to

third parties. Hence plaintiff demanded partition from the defendants 1 and 2 on 30.03.2011. But the defendants 1 and 2 gave evasive reply. They do not concede for partition. Hence plaintiff filed partition of 5/12 share.

The averments in the written statement filed by 1st defendant adopted by 2nd defendant and adopted by defendants 22 to 27 in brief is as follows:

4) Pitchadana Mudaliyar's two daughters Gangaiyammal and Kaveri were not mentioned in plaint. Pitchadana Mudaliyar's two daughters died. Kaveri died without any legal heirs. Gangaiyammal legal heirs are Ramasamy, Chandra, Amsam are necessary parties to the suit. The plaintiff's father Ramasamy have plaintiff and his three sisters Sasirekha, Lalitha and Vijayakumari. Sasirekha died. Her husband and daughter are alive. The said Lalitha and Vijayakumari and Sasirekha's legal heirs are necessary parties. Egambaram son of Pitchadana Mudaliyar have third defendant Saravanan and four daughters Sankari, Ponni, Santhi and Senthamarai and they are necessary parties. Sambandam, S/o. Pitchadana Mudaliyar also have apart from D4 to D6 sons. His wife 7th defendant and five daughters Saraswathi, Tamilselvi, Kalaiselvi, Latha and Poongodi and they are necessary parties. Suit filed without impleading them as necessary parties is not maintainable. It is false to state that Kuzhandaivel's four daughters executed a Will infavour of the plaintiff. Old tiled house in the suit property is demolished 30 years ago. The 1st defendant constructed tiled house in front part of the suit property on the western side in 17 feet and is enjoying for the past 30 years. Manimegalai daughter of 1st defendant also constructed RCC terrace building on the eastern side in vacant site in front part 20 feet breadth and 25 feet in length. Already for 30 years Thaiyalnayagi, W/o. Thandapani Mudaliyar and her daughter Thilagavathy are residing on the south part of the suit property in tiled house. They executed a sale deed on 11.09.1971 infavour of 2nd defendant. The plaintiff's family left the tiled house in the suit property since 30 years ago and his legal heirs never resided in the suit property old tiled house which was renovated by the 1st defendant. Patta stand in the name of the 2nd defendant since 15 years. Suit property belongs to Sattanathaswamy Devasthanam

and 1st defendant paying amount to kovil since 30 years. In Sirkali municipality town survey register also stand in the name of 2nd defendant. The 2nd defendant name exist since 30 years for the house on the west of the suit property. EB connection stand in the name of 1st defendant for several years. He is entitled to adverse possession. Other sharers claim is ousted. Pitchadana Mudaliyar died 75 years ago. Hence suit barred by Limitation. The defendants 1 and 2 are entitled absolutely in the suit property.

The averments in the additional written statement filed by the 1st defendant adopted by 2nd defendant in brief is as follows:

5) The plaintiff has not impleaded all the sharers as averred in written statement. The suit is liable to be dismissed for non joinder of necessary parties. After inclusion of other sharers, the plaintiff share will not be 5/12. Hence suit is not maintainable to be dismissed.

The averments in the written statement filed by the 4th defendant in brief is as follows:

6) The relationship between the parties is admitted. It is admitted that suit property was purchased by Pazhani Mudaliyar on 20.12.1895. The suit is bad for non joinder of necessary parties. There is no oral partition between the sons of Pazhani Mudaliyar. Sri Sattanathar Temple is necessary party. All the female members of the family are also necessary parties. The alleged Will executed by four daughters of Kuzhandaivel Mudaliyar are not genuine. Even Kuzhandaivel has no right to bequeath his 1/3rd share to his daughters by way of Will. There is another house of joint family adjacent to the suit property in door no. 54 is not included and so suit is bad for partial partition to be dismissed. Pazhani Mudaliyar's family has joint family business Ambika Vilas Hotel, a Cycle mart, Vegetable market fee collecting agency was not stated in plaint and rendition of account of business to be done before partition. Pazhani Mudaliyar family is a well known family in Sirkali town. It possess lot of golden jewels and silver articles are not noted in the plaint. A portion of the suit house was demolished and a new building was erected by Manimegalai, the daughter of 1st defendant is not a party to the proceeding. She is a non-sharer

constructed a building. Partition with this building cannot be effected. The arrival of share is incorrect. Plaintiff cannot take away the share of Kuzhandaivel Mudaliyar. 4/12 share allotted to 2nd defendant is not a sharer in the joint family property. Court fee calculated is incorrect. Value of the property is very low. Suit to be dismissed.

7) Based on the pleadings, the following issues were framed for trial:

1. Whether the plaintiff is entitled to 5/12th share in the suit properties?
2. To what other reliefs, the plaintiff is entitled?

8) On the side of the plaintiff, he was examined as PW1 and Tr. Manimozhiyan was examined as PW2 and ExsA1 to A17 were marked. On the side of the defendants, 5th defendant Tr. Ramesh was examined as DW1 and 24th defendant was examined as DW2 and Exs.B1 to B6 were marked. The learned trial judge dismissed the suit and therefore this appeal is preferred by the plaintiff. For the sake of convenience, and in order to avoid confusion, the litigants shall be referred to as per their litigants status before the trial court.

Brief of Memorandum of Appeal filed on behalf of the Appellant / Plaintiff:

9) The trial court failed to consider that the respondent not denied that appellant's grandfather entitled to 1/3 share and appellant is entitled to 1/12 share. The trial court also failed to consider Pichanda Mudhaliyar's 4 sons each entitled out of 1/3 share of Pichanda Mudhaliyar was not denied by the respondents. The trial court failed to consider that Kulandhaivel, Thandapani, Pichanda Mudhaliar are brothers and effected oral partition noted in Ex.A7 and Thandapani Mudhaliar's legal heirs sold their property infavour of 1st respondent and no evidence for oral partition and if at all oral partition presumed Pichanda Mudhaliar entitled to 1/3 share and accordingly appellant entitled 1/12 share as already oral partition effected between 3 persons and wrongly dismissed the partition suit. The trial court failed to consider that Kulandhaivel Mudhaliar's 4 daughters Marimuthu Ammal, Thillaiyammal,

Anjalai and Nagammal as his legal heirs and executed will A6, A4, A3 and A5 in respect of their 1/3 share in favour of appellant son of Gnanambal as they resided in that property for more than 30 years and executed each 1/12 share and the will was signed by maternal uncle and executors signed was witnessed and without consider their enjoyment for more than 30 years and wrongly considered as if the will is not true and therefore the appellant not entitled to 1/3 share, the findings is incorrect under law and justice. Merely the will was signed by the relatives, the trial court wrongly taken decision as against the Will recitals noted as there is no possibility for her son to live in that small extent share was not given to him was not considered by the trial court. Further, the trial court presumed as the Will is not true as it was written by the same time as the relatives signed is against law. The legal heirs of executors did not come forward to plead the Will is not valid for several years. So on that ground it could not be considered that legal heirs of executors to be impleaded was not properly considered by the trial court. DW1 in his evidence stated that Pichanda Mudhaliar's son having equal share and therefore Pichanda Mudhaliar's daughters Kaveri Ammal and Gangai Ammal do not have right in the property and they not taken steps to add as party by themselves and therefore the trial court ought to have considered that Kaveri Ammal and Gangai Ammal are not necessary party. Further the address of Kaveri Ammal and Gangai Ammal were not mentioned by the respondents. The legal heirs of other executors was not proved and was not also considered by the trial court. Further the trial court considered that with regard to 3/4 share in the suit property the 1st and 2nd defendants not acquired any adverse possession on the basis was not proved by them without framing issues on adverse possession concluded as the defendants are not entitled to title and possession over 3/4 share in the suit property. The trial court findings without accepting adverse possession that as it is stated in Ex.A7 oral partition effected between appellant's grandfather and brothers and suit dismissed for non joinder of necessary party as against law. Further, the trial court DW1 in his cross examination admitted that come to know the will only after coming to court and more than 40 years he and his father

not enjoyed the properties and it is incorrect to state that the plaintiff have not right in the suit property. Further, the trial court failed to consider the evidence of DW.2 that she not read over the 4 wills and her father entitled to 1/12 share and no documents to claim that her father entitled to the entire property and not read over the documents filed by the plaintiff and she saw the receipt of house tax and notice not sent for payment of house tax receipt to him. Further, the trial court ought to conclude that PW1 proved his claim through evidence and PW2 also attested as witness in same Will and scribed and relative and A6 executed by his mother Marimuthu ammal and Anjalai Ammal also executed the will in which PW2 brothers and he signed as witness and in Will executed by Nagammal along with his brother he signed as witness and it was written by the Nagammal's son Rajaraman and so the trial court has to decide the 4 Wills are genuine. Hence, the trial court the judgment and decree to be set aside.

10) Points to be decided in the appeal are as follows:

1. Whether the plaintiff is entitled to 5/12share of partition in the suit property as prayed for?
2. Whether the three Wills dated 10.11.1975 and another Will dated 07.08.1997 are forged?
3. Whether the trial court judgment and decree is to be set aside and the appeal to be allowed?
4. To what other relief the plaintiff is entitled to?

Points for consideration:

11) Admittedly, the suit property belong to Pazhani Mudaliyar by virtue of Ex.A1 sale deed dated 12.12.1895. It is also admitted that the said Pazhani Mudaliyar died intestate. It is also admitted that Kuzhandaivel Mudaliyar, Thandapani Mudaliyar and Pitchadana Mudaliyar are three sons. It is contended by the plaintiff that said Kuzhandaivel Mudaliyar, Thandapani Mudaliyar and Pitchadana Mudaliyar each have 1/3 share in the suit property and it is also admitted by the 4 to

7 defendants in their written statement. But, the defendants 1 and 2 in their written statement plead that plaintiff failed to implead two daughters of Pitchadana Mudaliyar and they are Gangaammal and Kaveri. Kaveri died without issues. Gangaammal legal heirs are Ramasamy, Chandra and Amsam are necessary parties to the suit not impleaded. However Ex.A2 Will dated 17.08.1925 executed by Kuzhandaivel Mudaliyar in favour of his four daughters Marimuthammal, Thillaiammal @ Meenakshi and Anjalaiammal and Nagammal in respect of his 1/3 share in the suit property. In Ex.A2 Will it is clearly noted that Kuzhandaivel Mudaliyar have 1/3 share in ancestral house and his self acquired properties are bequeathed in favour of his daughters. In Ex.A2 Will also Survey No.426/1 in Puzhugupettai Street in Sirkali in survey number was noted. It is a registered Will. The other co-sharers of Kuzhandaivel Mudaliyar are his brothers Thandapani Mudaliyar and Pitchadana Mudaliyar or their legal heirs never disputed the Ex.A2 Will executed by Kuzhandaivel Mudaliyar.

12) The plaintiff Kutralalingam claim share of 1/3 share in the suit property on the basis of Exs.A3 to A6 Will alleged to have executed by Anjalaiammal, Thillaiammal @ Meenakshi, Nagammal who are daughters of Kuzhandaivel Mudaliyar. The said Wills are unregistered which is disputed by the defendants as it is forged and the testator of Will one Marimuthammal have four sons and three daughters which is admitted by the plaintiff and another testator Thillaiammal also have one daughter as legal heir is also admitted by the plaintiff and another testator Anjalaiammal have no issues and another testator Nagammal have two sons and two daughters as legal heirs and it is also admitted by the plaintiff. The Wills Ex.A3 to A6 do not contain any recitals for omission of allotting properties to the legal heirs of four testators, ie. four daughters of Kuzhandaivel Mudaliyar. The defendants 1 and 2 dispute the thumb impression of four testators in that Wills and so it has to be proved only through their direct legal heirs. The plaintiff is the son of Ramasamy who is the son of Pitchadana Mudaliyar. The said Ramasamy's wife Gnanambal and PW2 is the brother of Gnanambal and the said PW2 and Gnanambal mother is Marimuthammal,

daughter of Kuzhandaivel Mudaliyar. So, the plaintiff examined PW2 Thiru. Manimozhiyan, aged 77 years to prove the Wills Exs.A3 to A6 executed by four daughters of Kuzhandaivel Mudaliyar.

13) Further, PW2 in his proof affidavit specifically stated that Anjalaiyammal executed Will dated 10.11.1975 infavour of Kutralalingam, S/o. Gnanambal who is his sister in which he and his brother Sambantham and Subrayan signed as witness. The said Sambandam died six months back. The said Will Ex.A3 was scribed by him. In his presence Anajaliyammal marked her thumb impression. Sambantham and Subrayan are also signed as witness in the presence of Anjalaiyammal and then he signed as a scribe.

14) Further, PW2 also stated in his proof affidavit that his mother Marimuthammal executed Ex.A6 Will dated 07.08.1977 infavour of Plaintiff inrespect of her share and marked her thumb impression in which he and his brother signed as witness and his brother Sambantham scribed that Will. Further, he also stated in the proof affidavit that Meenakshiyammal also executed Ex.A4 Will 10.01.1985 infavour of plaintiff inrespect of her share and signed and marked her thumb impression in his presence and his brother and they also signed as witness in her presence and that will was scribed by his brother Sambantham.

15) Further, PW2 also stated in his proof affidavit that his junior mother Nagammal also executed Ex.A5 Will dated 10.01.1985 inrespect of her share infavour of plaintiff and Nagammal marked her thumb impression in his presence and it was scribed by Rajaraman, S/o. Nagammal and four Wills were executed while they were in sound state of mind. Ex.A3 dated 10.11.1975 and Ex.A6 dated 07.08.1977 are unregistered and more than 30 years old document. Ex.A4 and A5 Wills dated 10.01.1985 are more than 27 years old documents. In the case of a Will, which is required to be executed in the mode provided in Section 63 of Indian Succession Act when there is an attesting witness available, the Will is to be proved by examining him. He must not only prove that the attestation was done by him but he must also prove the attestation by the other attesting witness. The Hon'ble

Supreme Court of India consistently reaffirms that non-registration does not automatically mean a Will is fake or invalid. The legal heirs of four daughters Marimuthammal, Anjalaiymmal, Thillaiyammal @ Meenakshi, Nagammal not challenged the Exs.A3 to A6 Will from the date of execution of will and enjoyment of the plaintiff in the suit property in a portion from the lifetime of above four testators. The plaintiff also filed Exs.A8 to A15 to prove possession and enjoyment of suit property from the year 2004 till 2010 before filing of the suit in the year 2011. Ex.A16 is the letter received by the plaintiff. Further, PW2 aged about 75 years who is maternal uncle of plaintiff admitted in cross examination that it is true that Pazhani Mudaliyar's sons Kuzhandaivelu, Thandapani and Pitchadanan enjoy on west, south, east by oral partition and it is proved that in Exs.A3 to A6 it is noted as $\frac{1}{4}$ undivided their share on the western portion of the house. He stayed in suit property during his study period and so he know the enjoyment of suit property by division. He also admit that the plaintiff is son of Ramasamy through his 1st wife and Manickam is also another son and the said Manickam and Ramasamy were given a house in opposite of suit property and it was sold by them is true and therefore Ramasamy's 1st wife's sons and legal heirs are not entitled to any share in the suit property. But no document filed to prove the sale of property given to Ramasamy and Manickam. However, the plaintiff claim share by virtue of Exs.A3 to A6 will was not denied by PW2.

16) The Pazhani Mudaliyar's 2nd son Thandapani Mudaliyar also died. His only son is Govindasamy Mudaliyar and his wife is Thaiyalnayagi and daughter is Thilagavathy. It is admitted that the said Govindasamy Mudaliyar died. The said Thaiyalnayagi and Thilagavathy are entitled to $\frac{1}{3}$ share of Thandapani Mudaliyar and so they executed Ex.A7 sale deed dated 11.09.1971 in-favour of 2nd defendant who is wife of 1st defendant Subramani Mudaliyar. The said Subramaniya Mudaliyar, 1st defendant is the son of Pitchadana Mudaliyar. The said Pitchadana Mudaliyar have five sons Manickam, Ramasamy, Egambaram, Sambantham and 1st defendant Subramaniya Mudaliyar and two daughters Gangai ammal and Kavery. The said Manickam, Ramasamy, Egambaram and Sambantham died also admitted.

Kaliyaperumal is the son of deceased Manickam. The said Kaliyaperumal also died. The plaintiff is the son of deceased Ramasamy and the defendants 10 and 11 are sisters of the plaintiff and D12 is the daughter of plaintiff's deceased sister Sasirekha. The 3rd defendant Saravanan is the son of deceased Egambaram and defendants 13 to 16 are daughters of deceased Egambaram. The 4th defendant Kumar, 5th defendant Ramesh, 6th defendant Prakash are sons of deceased Samabantham and his wife Susila, the 7th defendant and defendants 17 to 21 are daughters of deceased Sambantham. The 1st defendant son of Pichanda Mudaliyar died and his wife is D2 and D22 are same and their legal heirs are D23 to D27. The above relationship is admitted by the both parties. However the defendants 1 and 2 contend that there are three sisters to plaintiff. They are Sasirekha, Lalitha and Vijayakumari. Sasirekha died living her husband and daughter. The said Lalitha and Vijayakumari were added as party 10th and 11th defendant after amendment. Further, Pitchadana Mudaliyar's son Egambaram have four daughters Sankari, Ponni, Santhi and Senthamarai apart from 3rd defendant Saravanan and they were added as party 13th to 16 defendant. Pitchadana Mudaliyar's another son Sambantham also have five daughters Saraswathi, Tamilselvi, Kalaiselvi, Latha and Poongodi apart from his sons defendants 4 to 6 and wife 7th defendant and the said five daughters of Sambandham were added as defendants 17 to 21 after amendment. The defendants 1 and 2 contend that 1st defendant renovated tiled house on the western side in front of suit property and residing more than 30 years and his daughter Manimegalai also constructed RCC terrace on the eastern side of her tiled house and virtue of Ex.A7 sale deed also 2nd defendant purchased share of Thandapani Mudaliyar from his son Govindasamy's wife Thaiyalnayagiymmal and his daughter Thilagavathy. The said Ex.A7 sale dated 11.09.1971 also clearly recited that oral partition effected between Kuzhandaivel Mudaliyar, Thandapani Mudaliyar, Pitchadana Mudaliyar who are sons of Pazhani Mudaliyar and the properties sold portion was also purchased by Pazhani Mudaliyar on 02.12.1895. In Ex.A7 sale deed also 1/3 share allotted to Thandapani Mudaliyar and after his demise enjoyed by his son Govindasamy Mudaliyar and after

his demise enjoyed by his wife Thaiyalnayagi and daughter Thilagavathy. Thus it is established that the suit property originally belong to Pazhani Mudaliyar and after his demise his three sons Kuzhandaivel Mudaliyar, Thandapani Mudaliyar, Pitchadana Mudaliyar effected oral partition among them prior to 1971 itself and it was not disputed by their legal heirs also till the filing of the present suit in the year 2011. The 2nd defendant filed Ex.B3 Manaivari Thoraya Patta and Ex.B4 and B5 house tax receipts and B6 property tax receipts in respect of the portion of the property purchased by her.

17) Further, DW2 who is the 24th defendant is the son of defendants 1 and 2 depose that his father 1st defendant died and it is true that his father entitled to 1/12 share and they have not filed documents to claim entire suit property for his father and he along with Rukmaniyammal enjoyed the suit property and Rukmaniyammal is aged about 78 years and his mother Rukmaniyammal constructed a house 40 years ago and he also constructed a house in the year 2009 and no tax receipt in his name and it is true that his grandfather Pitchadana Mudaliyar have 1/3 share and his father Subramaniya Mudaliyar have 1/12 share. Further, DW1 5th defendant on behalf of 4, 6, 7, 17 to 21 deposed that they are not in enjoyment of the suit property and his father also not enjoyed the suit property for more than 30 years and they claim 1/12 in the suit property. He also admit that his junior father Subramaniyan also constructed the tiled house in the suit property and residing in the suit property.

18) Further, it is admitted by DW1, 24th defendant Manimegalai who is daughter of defendants 1 and 2 that oral partition effected between Kuzhandaivel Mudaliyar, Thandapani Mudaliyar and Pitchadana Mudaliyar who are sons of Pazhani Mudaliyar. In which western house allotted to Kuzhandaivel Mudaliyar southern part of house allotted to Thandapani Mudaliyar and eastern part allotted to Pitchadana Mudaliyar. Further, in Ex.A7 sale deed dated 11.09.1971 executed infavour of 2nd defendant by Thilagavathy daughter of Thandapani Mudaliyar and Thaiyalnayagi, W/o. Govindasamy Mudaliyar who is the son of Thandapani Mudaliyar who is the son of Pazhani Mudaliyar. In which oral partition effected

among three sons of Pazhani Mudaliyar and the properties received by Thandapani Mudaliyar specifically mentioned. Thereby the three sons of Pazhani Mudaliyar became absolute owner in respect of share received by oral partition effected among them. Further, Kuzhandaivel Mudaliyar executed Ex.A2 Will dated 17.08.1925 in favour of his four daughters Marimuthammal, Thillayammal @ Meenakshi, Anjalaiyammal in respect of his 1/3 share in the suit property. At that time Kuzhandaivel Mudaliyar have undivided 1/3 share which he bequeathed to his four daughters. Thereby his four daughters executed Ex.A3 to A6 Will in favour of plaintiff leaving their own legal heirs and without any reasons specified in that Will for omitting their legal heirs. Though the said Wills are unregistered and to prove the same PW2 maternal uncle of plaintiff who is attester and scribe in that Wills testified as to execution of Will by testators. The legal heirs of testators not challenged the Exs.A3 to A6 Wills and enjoyment of the plaintiff in a portion of suit property even during the lifetime of testators. Further, PW2 is the son of one of the testator Marimuthammal who executed Ex.A6 Will dated 07.08.1977 and PW2 also scribe in Ex.A3 Will dated 10.11.1975 executed by Anjalaiyammal testator. Further, in Ex.A4 Will dated 10.01.1985 executed by Meenakshiyammal PW2 signed as witness. Further, in Ex.A5 Will dated 10.01.1985 executed by Nagammal also PW2 signed as witness and he had witnessed the execution and thumb impression of testators and signature of other witnesses. Even though Exs.A3 to A6 Wills were signed and scribed by close relatives it was not disputed by any of legal heirs or testators from the date of execution till the date of filing of suit in the year 2011. The trial court presumption that the said Will as signed by relatives is not true and would have executed at the same point of time needs interference as the testators accepting the enjoyment of portion of suit property by plaintiff vested with him their share each 1/12 in favour of him. Accordingly the plaintiff is entitled to 1/3 share by virtue of Will Exs.A3 to A6 in respect of the suit property.

19) Further, the plaintiff as the son of Ramasamy who is the son of Pitchadana Mudaliyar is also entitled to share 1/3 share of Pitchadana Mudaliyar along with 3rd

defendant son of Egambaram and D13 to D16 daughters of Egambaram and 4 to 6 defendants sons of Sambantham and 7th defendant Susila, W/o. Sambantham and D17 to D21 daughters of Sambantham and as 1st defendant died, his legal heirs D22 to D27 and thereby as legal heirs of Pitchadana Mudaliyar he is entitled to 1/12 share in the suit property along with his sisters D10 and D11 and sister's daughter D12. Further, Pitchadana Mudaliyar's elder son Manicka Mudaliyar only son Kaliyaperumal also died unmarried. Further, Pitchadana Mudaliyar's 1st son is 1st defendant Subramaniya Mudaliyar who deceased is entitled to 1/12 share. Though 1st defendant renovated tiled house on the western side in front of suit property and residing more than 30 years along with his wife 2nd defendant and his daughter Manimegalai build RCC terrace on the eastern side of the suit property and by virtue of Ex.A7 sale deed executed by Thaiyalnayagiyammal, W/o. Govindasamy and her daughter Thilagavathy infavour of 2nd defendant as sold shares of Thandapani Mudaliyar, the 2nd defendant and 24th defendant Manimegalai and D23, D25 to D27 their daughters could not claim absolute right in the suit property by filing Ex.B3 Thorayapatta in the name of 2nd defendant and Ex.B4, B6 house tax receipts in the name of 2nd defendant and Ex.B2 and B6 notice issued in the name of 2nd defendant. Furthermore it is admitted by DW2, 24th defendant that there is no document to prove that entire property belong to her father. Even though she admit that she and her mother 2nd defendant are enjoying the property and paying house tax, to claim adverse possession they have to admit the owner and title of the other party. But, the defendants 1 and 2 and 24th defendant do not admit the title and share of plaintiff and his predecessor but claim title to defendants 1 and 2 absolutely in the suit property as averred in their written statement was also admitted. So, the defendants 1 and 2 and 24th defendant not entitled to claim even adverse possession. Therefore, the 2nd defendant is entitled to claim only 1/3 share purchased by virtue of Ex.A7 sale deed and 1/3 share of her husband, 1/12 share along with her legal heirs D23 to D27.

20) Further, DW1 though testified as he came to know about Will only on coming to court and admit that more than 40 years they and their father never enjoyed

the suit property and Egamabaram family also not enjoyed for 12 years due to job and also specifically admit that it is incorrect to state that plaintiff have no right in the suit property. Further, DW2, 24th defendant, Tmt. Manimegalai, daughter of defendants 1 and 2 also admit that it is true her father have 1/12 share in the suit property and contest as entire property belong to them and no document filed to prove entire property belong to her father and also admit as not read over the documents filed by the plaintiff and not issued notice to plaintiff for the house tax receipts in his name. Accordingly plaintiff entitled to 4/12 share absolutely by virtue of Exs.A3 to A6 Will with 1/12 share as inheritance along with his sisters D10, D11 and sister's daughter D12 and 1st defendant's 1/12 share devolve upon his legal heirs D2, D23 to D27 and 2nd defendant by virtue of purchase by Ex.A7 entitled to 4/12 share and as legal heirs of Egambara Mudaliyar, 3rd defendant and daughters D13 to D16, for deceased D14's share her legal heirs D28 to D30, for deceased D17's share her legal heirs R29 to R32 and for deceased D13's share her legal heirs R33 to R36 entitled together to 1/12 share and as legal heirs of Sambantham Mudaliyar D4 to D7 and D17 to D21 are entitled to 1/12 share.

21) In the light of above facts and circumstances, the trial court judgment warrants interference of this court to set aside the decree and judgment of the trial court. The plaintiff is entitled to 1/3 share by virtue of Will and inheritance of 1/12 share along with his sisters D10, D11 and D12 daughter of deceased sister Sasirekha. Accordingly I answer point Nos. 1 to 3 in favour of the plaintiff.

Point No. 4

22) Considering the relationship between the parties, the parties are directed to bear their own costs. Accordingly, this issue is answered as against the plaintiff.

In the result, this appeal is allowed accordingly. The judgment and decree dated 21.08.2017 in OS. No 36 of 2011 passed by the Principal Sub Court, Mayiladuthurai is set aside. The parties are directed to bear their own costs.

Dictated to the steno-typist, directly typed by her in computer, corrected and pronounced by me in the open court this 07th day of July 2026.

District Judge,
Mayiladuthurai.

Copy to:
The Additional Subordinate Court, Mayiladuthurai.

Judgment: Fair & Draft
A.S. No. 40/2017
Dated: 07.07.2026