

**IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE, PUDUKKOTTAI**  
**Present : Tmt. J.A. Kokila, M.A., M.L.,**  
**Principal District Judge.**

**(Thiruvalluvar Aandu 2051, Sarvari Varudam, Aavani Thingal 8<sup>th</sup> Day)**  
**Monday, the 24<sup>th</sup> day of August' 2020**

**Original Suit No. 46/2011**

1) Amudha  
2) Kanimozhi ... Plaintiffs

**//Versus//**

1) Chandra  
2) Senthilkumar  
3) Selvamanickam  
4) Kavitha  
5) Senthamilselvi  
6) Durairaj  
7) Subha  
8) Ramu  
9) Saraswathi  
10) Veeraiahthevar (died)  
11) Ramasamy  
12) Karuppaiah  
13) Sivakami @ Pappathi  
14) Angaiyarkanni  
15) Yuvaraj  
16) Priyanga ... Defendants

This suit came up before me for final hearing on 07.08.2020 in the presence of Thiru. S.Selvavinayagam, counsel for the plaintiffs and of Thiru. Pon.Gajendran, counsel for the defendants 1, 3 & 4 and of Thiru. M.Nallan Asaithambi, counsel for the defendants 2 & 7 and of Thiru. N.Balakrishnan, counsel for the 5<sup>th</sup> defendant and of Thiru. A.Karuppaiah, counsel for the 6<sup>th</sup> defendant and of Thiru. Khan Mohamed, counsel for the defendants 8 & 9 and the defendants 11 to 16 having remained set exparte and the 10<sup>th</sup> defendant died and after hearing arguments of both sides and upon perusing the material records and having stood over for consideration till this date, this Court delivered the following;

## **JUDGMENT**

This suit has been filed for the relief of partition, separate possession and to cancel the inam settlement deed dated 28.04.2010 as null and void with cost and other reliefs.

### **The plaint averments in brief are as follows :-**

2) Originally, the suit schedule 'A' property along with other properties were partitioned between the plaintiffs' father, Ganesa Devar and his two brothers by virtue of the registered family partition dated 17.08.1979, wherein, the 'C' schedule property was allotted to the said Ganesa Devar, who was in possession and enjoyment of the same. The said Ganesa Devar worked as a Teacher and after retirement, died on 27.11.1990. During his lifetime, Ganesa Devar sold some of his property and after his death, the remaining properties of Ganesa Devar are enjoyed by the plaintiff and the defendants 1 to 5 as joint family property without any partition. Only after the death of Ganesa Devar, the defendants 2 to 5 got married. The 6<sup>th</sup> item house property was constructed by their father. The 1<sup>st</sup> defendant, who is the wife of late Ganesa Devar, with the consent of the joint family, received the entire pension and others benefits of the late Ganesa Devar. The suit schedule 'A' properties are enjoyed by the defendants 1 to 5 as the joint family property. The income derived from the joint family property was given to the plaintiffs every now and then by the 2<sup>nd</sup> defendant. While so, the 2<sup>nd</sup> defendant along with his mother, the 1<sup>st</sup> defendant had illegally executed a registered inam settlement deed dated 28.04.2010 in favour of his wife Suba, the 7<sup>th</sup> defendant with respect to the item 1 and 2 property as against the welfare of their joint family. The 2<sup>nd</sup> defendant has no right to execute the inam settlement deed alone with respect of the joint family property. Thereafter, the 7<sup>th</sup> defendant had executed a registered sale deed dated 22.06.2011 in favour of a third party, the 6<sup>th</sup> defendant with respect to the 1<sup>st</sup> item property along with other property, wherein, the 2<sup>nd</sup> defendant attested as witness. The said inam settlement deed dated 28.04.2010 and the sale deed dated 22.06.2011 are not acted upon and it will not bind the plaintiffs. Since, the 6<sup>th</sup> defendant purchased the property with the knowledge that it is a joint family property,

it is not valid in law. In view of the said act of the 2<sup>nd</sup> defendant, on 04.08.2011, the plaintiff issued a legal notice to the defendants 1 to 5, calling for partition. In the said legal notice, it is mentioned that the inam settlement deed and the sale deed executed based on it to the defendant 6 is illegal and issued legal notice to the defendants 6 and 7. But, despite receipt of the same, they failed to reply. Recently, the plaintiffs came to know that the 1<sup>st</sup> defendant had executed a sale deed with respect of the 3<sup>rd</sup> item property and the same was confirmed from the encumbrance certificate dated 25.10.2011 from Arathangi Registrar Office. Based on the said encumbrance certificate, on 28.10.2011, the plaintiffs applied for the certified copy of the sale deed and came to know that the defendants 1 to 3 had executed a sale deed dated 05.09.1991 in favour of Amirthalingam, the husband of the defendants 8 and 9 with respect of the 3<sup>rd</sup> item property. After the death of the said Amirthalingam, it was known that the Patta for the said property was transferred in the name of his wives, the defendants 8 and 9. Since the said sale was not executed for the benefit of the joint family, the same will not bind the plaintiffs. Hence, the both the plaintiffs are entitled to 2/7 share in the suit schedule 'A' property. Hence, the suit.

**The contentions made in the written statement filed by the 1<sup>st</sup> defendant and adopted by the defendants 3 to 5 are in brief as follows :-**

3) The plaintiff averments are denied in toto except those that are specifically admitted herein. The fact that the suit properties belonged to Ganesa Devar is admitted. This defendant is willing to have partition with respect to the suit properties but, all the ancestral properties were not included in the suit. In addition to the suit properties, Ganesa Devar had properties in Vigneshwaram village and another village and so, these defendants are also entitled to those properties. The 2<sup>nd</sup> plaintiff married on her own wish against the willingness of the family and thereafter, was not living with them. Due to the said act of the 2<sup>nd</sup> plaintiff, this defendant and Ganesa Devar health became worse and as a consequence, Ganesa Devar died. Even for the condolence, the 2<sup>nd</sup> plaintiff did not attend. By threatening and harrasing the 1<sup>st</sup> plaintiff, on

05.09.1991, the 2<sup>nd</sup> defendant had executed a sale deed with respect to the 3<sup>rd</sup> item property in favour of Amirdhalingam but, there wa no necessity for this defendant to sell the said property and also, this defendant did not receive any consideration for the same. Thus, this defendant never acted against the welfare of the plaintiffs and other defendants with regard to the ancestral properties. The fact that the 2<sup>nd</sup> defendant is acting against the welfare of the joint family is admitted. This defendant had performed her children's marriage with dowry. The retirement amount and other benefits of her husband were spent for her children only. The plaintiffs and the 2<sup>nd</sup> defendant are trying to cheat this defendant. The suit schedule mentioned properties are wrong and the entire joint family properties were not fully included in the suit. Hence, prayed to dismiss the suit with cost.

**The contentions made in the written statement filed by the 2<sup>nd</sup> defendant and adopted by the defendants 6 and 7 are in brief as follows :-**

4) The plaint averments are denied in toto except those that are specifically admitted herein. The plaint averments are false, frivolous and vexatious in nature and thus, the plaintiffs are not entitled any relief. There is no objection regarding the genealogy list mentioned in the plaint. The suit properties are the ancestral properties of Ganesa Devar and later, allotted to Ganesa Devar, by way of partition. During his lifetime, Ganesa Devar sold some of the properties. Further, prior to the year 1988, Ganesa Devar performed the marriage of the plaintiffs with sufficient dowry out of the joint family property and his salary. Ganesa Devar worked as a Teacher. The value of the dowry provided to the plaintiffs at the time of their marriage is twice the value of the share of their property. Except the plaintiffs and the defendants 4 and 5, an oral partition was entered between this defendant and the 3<sup>rd</sup> defendant with respect to the suit properties and accordingly, they are in possession and enjoyment of the same. After death of Ganesa Devar, the defendants 1 to 3 sold the 3<sup>rd</sup> item suit schedule property for valid consideration and with the benefits derived from Ganesa Devar job and with the earnings of the defendants 2 and 3, performed the marriage of the defendants 4 and 5 in the presence of the 1<sup>st</sup> defendant with customary presents twice the value of

the share of their property. Thereafter, the plaintiffs were provided with customary presents for their 1<sup>st</sup> delivery, for Pongal and Deepavalli and for their children out of love and affection without making any documents. After giving the amount that was equal to his half share in suit 1<sup>st</sup> item property to the 3<sup>rd</sup> defendant, this defendant had executed the Inam Settlement deed in favour of the 7<sup>th</sup> defendant. Wantonly, the value of the suit schedule item No.1 property is shown high in the plaint. During the execution of the Inam Settlement deed, the guideline value of the said property was less. Likewise, the value of the suit schedule item No.2 property is shown less and the value of the suit schedule item No.3 property, which is more than ten lakhs is shown less as Rs.2,44,400 in the plaint with ulterior motive. After the receipt of the legal notice, when this defendant approached the plaintiffs, they told that it was sent for name sake and they have no intention to file any suit. So, this defendant did not send any reply. There is no cause of action and the suit is bad for non joinder of necessary parties. Hence, the plaintiffs are not entitled to any share in the suit properties and thus, the suit is liable to be dismissed with cost.

**The contentions made in the written statement filed by the defendants 8 and 9 are in brief as follows :-**

5) The plaint averments are denied in toto except those that are specifically admitted herein. The genealogy details stated in the plaint is not complete and few other legal heirs are wantonly omitted in the plaint. The plaintiffs' father Ganesan had two wives, out of whom, the 1<sup>st</sup> defendant is his first wife. Later, the said Ganesan divorced the 1<sup>st</sup> defendant as per the customary way and married one Janaki as his second wife. Through the second wife, Ganesan have three daughters namely, Jeyalakshmi, Vijayachandrika and Thamilselvi and in this regard, a suit in OS.No.153 of 1991 was contested before the District Munsif Court, Pudukkottai, above which appeal was filed in AS.No.34 of 1993 before the Sub-Ordinate Court, Pudukkottai, above which second appeal was filed in SA.No.729 of 1995 before the Hon'ble High Court, Madras. But, these facts are intentionally suppressed in the plaint. The fact that the suit properties belonged to the

plaintiff's father, Ganesan by way of partition dated 17.08.1979 is admitted one. After the death of Ganesan on 27.11.1990, his first wife (1<sup>st</sup> defendant herein) along with her children (the plaintiffs 1 and 2 and the defendants 2 to 5) and his second wife Janaki along with her daughters, Jeyalakshmi, Vijayachandrika and Thamilselvi were living separately. After the death of Ganesan on 27.11.1990, his son, the 2<sup>nd</sup> defendant herein, who was then aged 21 years old, took the position of Kartha of the family and was in joint possession and enjoyment of the joint family properties. During the lifetime of Ganesan, the 1<sup>st</sup> plaintiff's marriage was performed with sufficient customary presents. After becoming Kartha of the family, the 2<sup>nd</sup> defendant was continuously doing all customary presents and also, sent her aboard for her job. Similarly, the defendants 1 to 3 had given sufficient customary presents to the 2<sup>nd</sup> plaintiff and to the defendants 4 and 5. On 05.09.1991, a registered sale deed was executed by this defendants' husband in favour of one Amirthalingam (husband of 8<sup>th</sup> and 9<sup>th</sup> defendants) with respect to item No.3 of the suit schedule "A" property on valid consideration for the welfare of their joint family. This suit was filed after the lapse of 13 years after the 5<sup>th</sup> defendant attained majority. The item No.3 was purchased by this defendants' husband for valid consideration when the 5<sup>th</sup> defendant was 10 years old and after 05.09.1991 onwards, the said item No.3 property did not remain as the joint family property of the plaintiffs and the defendants 1 to 5 and for the past about 22 years, they were not in constructive possession and enjoyment of the same. Hence, the plaintiffs cannot claim partition over the said item No.3 property and the suit is barred by limitation as far as the said item No.3 property. Further, suit valuation over the item No.3 property is incorrect and the suit should have been valued under Section 37(1) of the TamilNadu Court Fees and Valuation Act. For the past more than 15 years, the plaintiffs and the defendants 1 to 5 are not joint family. All the legal heirs of the deceased Amirthalingam and the three daughters of the deceased Ganesan through his second wife are necessary parties to this suit. Hence, the suit is bad for non joinder of necessary parties. There is no cause of action. If the court comes to the conclusion that the plaintiffs have share, the item No.3 property may be allotted to the share of the defendants 1 to 3

and from them allot the said share to these defendants as the same was purchased by these defendants' husband for valid consideration. Hence, the suit is liable to be dismissed with cost.

**Additional written statement filed by the defendants 2 and 7 are in brief as follows :-**

6) The three daughters Jeyalakshmi, Vijayachandrika and Thamilselvi of Ganesan through his second wife Janaki are necessary parties to the suit as they were declared as the legal heirs of late Ganesan in the suit in OS.No.153 of 1991 by the District Munsif Court, Pudukkottai. Since the property in SF.No.19/1, Oorvani village, Arathangi, Pudukkottai mentioned in item No.6 of the suit schedule 'A' property is a Government poramboke land, the plaintiffs cannot claim partition in the said property and so, the Tahsildar, Arathangi and the Collector, Pudukkottai are necessary parties to this suit. Hence, the suit is not maintainable. Since, the plaintiffs have not approached the court with clean hands, by suppressing the other legal heirs of Late Ganesan through his second wife, the suit is liable to be dismissed. Since no settlement deed dated 28.04.2010 was executed by the 6<sup>th</sup> defendant in favour of the 7<sup>th</sup> defendant, the plaintiffs are entitled to the 2<sup>nd</sup> relief as claimed in the plaint. The 2<sup>nd</sup> plaintiff had already filed a false complaint as against these defendants for land grabbing before District Crime Branch, Pudukkottai and the same was closed as not true. Further, the 2<sup>nd</sup> plaintiff has filed a false case as against this 7<sup>th</sup> defendant before the Judicial Magistrate, Arathangi and the same is pending. The 2<sup>nd</sup> defendant had executed a settlement deed in favour of the 3<sup>rd</sup> defendant with respect to his ancestral property to an extent of 0.06.0 in SF.No.175/7D and an extent of 0.04.5 in SF.No.175/7B in Patta No.253, Vigneshwaram village, Pallathivayal Group, Aranthangi Taluk, Pudukkottai and the same was registered as document No.1868/2010 before the Sub-Registrar Office, Aranthangi. Having knowledge about the same, the plaintiffs have wantonly failed to add the said property in this suit. Since the property in SF.No.37/12 found in item No.4 of the suit schedule 'A' property belonged to one Kathayiammal and Patta No.57 is registered in the said name, the plaintiffs cannot claim partition in the said property and further, the said Kathayiammal is not added as party in this suit. The property in

S.F.No.184/5 situated at Vigneshwaram village allotted to late Ganesan by virtue of the partition deed dated 17.08.1979 has remaining 11 cents after the sale made by the Ganesan. Since, the said land is not added, this suit is not maintainable. The 2<sup>nd</sup> defendant is entitled to the suit property as a coparcenor and both the plaintiffs got married even prior to the coming into effect of the amendment act. Hence, the share claimed by the plaintiff is not maintainable.

**Replication Statement filed by the 2<sup>nd</sup> plaintiff and adopted by the 1<sup>st</sup> plaintiff in short is as follows :-**

7) The contentions raised in the additional written statement by the defendats 2 and 7 are denied in toto except those that are specifically admitted herein. The defendants 2 and 7 have suppressed the fact that the Hon'ble Madurai Bench of the Madras High Court SA.No.729 of 1995 had upheld the Judgment of the Sub-Ordinate Court, Pudukkottai, dismissing the appeal in AS.No.34 of 1993 over the Judgment passed in OS.No.153 of 1991 by the District Munsif, Pudukkottai, decreeing the suit. The property in SF.No.19/1 is a Natham land and the same was in possession and enjoyment of the plaintiffs' father Ganesan and also, is in joint possession and enjoyment of the joint family till date. There is a concrete building bearing D.No.6/10, old D.No.23/1B in the said property with electricity connection No.162 in the name of the 1<sup>st</sup> defendant. Further, the plaintiffs by inadvetent has mentioned that the 6<sup>th</sup> defendant instead of 2<sup>nd</sup> defendant had executed a settlement deed in favour of the 7<sup>th</sup> defendant. Hence, the suit cannot be dismissed for typographical error alone. The date of birth of the 2<sup>nd</sup> plaintiff was on 15.05.1972 and got married on 20.06.1990 and thus, the 2<sup>nd</sup> plaintiff got married only after attaining 18 years. The case filed before DCB, Pudukkottai was closed since the case was civil in nature. Since the property in SF.No.175/7B and 175/7D were already sold by their father Ganesan in favour of one Pappathi and Sekar for meeting out their family expense, they have not added the said properties in this suit. The fact that the property in SF.No.37/12 belongs to one Kathayiammal is admitted and the said Kathayiammal is their aunt, i.e., Ganesan's sister. The said property was given to Ganesan orally

and he was in possession and enjoyment and till date it is in possession and enjoyment as joint family property.

**Additional written statement filed by the defendants 2 and 7 are in brief as follows :-**

8) The additional plaint averments are denied in toto except those that are specifically admitted herein. The property in S.F.No.184/5 situated at Vigneshwaram village allotted to late Ganesan by virtue of the partition deed dated 17.08.1979 has remaining 11 cents after the sale made by the Ganesan. Since, the said land is not added, this suit is not maintainable. Further, inspite of these defendants 2 and 7 mentioning the said fact in para 10 of their additional written statement, the amendment carried out by the plaintiffs including the entire extent of 55 1/4 is not tenable. Moreover, in order to decide this suit, the purchaser, who purchased from late Ganesan is necessary to be added in the suit. When a property is added, the value of the property has to be mentioned and court fee has to be paid. But, the plaintiffs failed to do so.

**Issues :-**

On the basis of the above pleadings, the following issues were framed on 24.10.2013;

- (i) Whether the plaintiffs are entitled to 2/7 shares in the suit "A" schedule properties?
- (ii) Whether the inam settlement deed dated 28.4.2010 is null and void?
- (iii) Whether the suit is bad for non-joinder of necessary parties?
- (iv) To what other relief ?

**Additional Issues :-**

The following additional issues were framed on 20.9.2017;

- a) Whether suit is bad for not including the entire extend in SF.184/5 ?
- b) Whether the plaintiff paid court fee for their relief claimed in suit ?

**Heard both side and records perused.**

**Issues No. (iii) :-**

9) The defendants 8 and 9 have raised a plea that the plaintiffs' father Ganesan had two wives, out of whom, the 1<sup>st</sup> defendant is his first wife, whom the said Ganesan divorced as per

the customary way and married one Janaki as his second wife. Through the said second wife, Janaki, Ganesan have three daughters namely, Jeyalakshmi, Vijayachandrika and Thamilselvi and in this regard, a suit was filed and contested. But, these facts are intentionally suppressed in the plaint. Since all the legal heirs of the deceased Amirthalingam and the three daughters of the deceased Ganesan through his second wife are necessary parties to this suit, the suit is bad for non joinder of necessary parties. This said plea of the defendants 8 and 9 was vehemently denied by the plaintiffs and the defendants 1, 3 to 5.

10) On the side of the 1<sup>st</sup> defendant, Ex-B1 and B2 documents were produced. On perusal, Ex-B1 is the copy of the Judgment dated 30.07.2007 passed by the Hon'ble Madurai Bench of Madras High Court in S.A.No.729 of 1995. Ex-B2 is the copy of plaint filed in the suit in O.S.No.209/2014 by the 1<sup>st</sup> defendant as against the defendants 8 and 9 before the District Munsif Court, Arathangi, claiming damages. In this regard, from the evidence of Dw1, it is seen that the 1<sup>st</sup> defendant alone is the wife of Ganesa Devar and he neither had any other wife nor any children. Further, it shows that Dw1 being the legally wedded wife of the said Ganesa Devar, is receiving his pension after the death of her husband from the past 20 years. From the evidence of Pw1, Dw1 and Dw2, it is seen that admittedly, a suit in O.S.No.153/1991 was filed by one Janaki on behalf of her daughters namely, Jeyalakshmi, Vijayachandrika and Thamilselvi as against the 1<sup>st</sup> defendant for the relief of perpetual injunction. Further, Ex-B1, Judgment dated 30.07.2007 passed by the Hon'ble Madurai Bench of Madras High Court in S.A.No.729 of 1995 reveals that the alleged second wife of Ganesan namely, Janaki had instituted a suit in OS.No.153 of 1991 for the relief of perpetual injunction to stop the 1<sup>st</sup> defendant from receiving the death cum retirement benefits of Ganesan before the District Munsif, Arathangi and the same is found decreed. While so, aggrieved by the said Judgment and Decree passed in O.S.No.153/1991, the first defendant herein had preferred an appeal in AS.No.34/1993 before the Subordinate Court, Pudukkottai. The said first appeal was allowed setting aside the Judgment and Decree passed by the trial court and consequently,

dismissed the suit in O.S.No.153/1991. Thereafter, as against the said Judgment and Decree passed in the first appeal in AS.No.34/1993, the second appeal in S.A.No.729 of 1995 was preferred by the said Janaki. The second appeal is found to be dismissed by our Hon'ble Madurai Bench of Madras High Court, observing that there was no proof of factum of marriage between the deceased Ganesan and the said Janaki and so, the plaintiffs in O.S.No.153/1991 cannot be treated as the legitimate children and they are not entitled to get the benefit within the contour of section 16 of the Hindu Marriage Act, 1955. That being so, from Ex-B2, it is seen that the 1<sup>st</sup> defendant has instituted a suit in O.S.No.209/2014 as against the defendants 8 and 9 before the District Munsif Court, Arathangi, claiming for damages for the reason that she had stated that Ganesa Devar had two wives. Therefore, a conjoined consideration of the above available evidence, this court is of the view that the suit is not hit by non-joinder of necessary parties and thus, issue no.(iii) is answered accordingly.

**Issues No. (i), (iv), (a) and (b) :-**

11) The case of the plaintiffs is that the suit schedule 'A' property was allotted to their father, Ganesa Devar by virtue of the registered family partition deed dated 17.08.1979, entered between their father and his two brothers. Further, their case is that their father was in possession and enjoyment of the same and after his death on 27.11.1990, except the properties sold by their father while he was alive, the remaining properties are being enjoyed by them along with the defendants 1 to 5 as joint family property without any partition. Thus, the suit schedule 'A' properties are their joint family properties and hence, they are entitled to 2/7 shares in the suit "A" schedule properties.

12) This claim of the plaintiffs was vehemently denied by the defendants 2, 6 and 7 by stating that prior to the year 1988, the plaintiffs' marriage were performed by their father by providing sufficient customary presents, which were of twice the value of the plaintiffs' share in the property. Further, contended that an oral partition was entered into between the 2<sup>nd</sup> defendant and

the 3<sup>rd</sup> defendant with respect to the suit properties and accordingly, they both are in possession and enjoyment of the same. Furthermore, contended that after the death of their father, the defendants 1 to 3 sold the 3<sup>rd</sup> item suit schedule property for valid consideration and with the benefits derived from their father's job along with their own earnings, performed the marriage of the defendants 4 and 5 in the presence of the 1<sup>st</sup> defendant with customary presents twice the value of the defendants 4 and 5's share in the properties. Also, stated that they provided the plaintiffs with customary presents even for their 1<sup>st</sup> delivery and for the festivals and also, for the plaintiffs' children out of love and affection without making any documents.

13) That being so, with regard to the plaintiffs' claim for partition, the defendants 1, 3 to 5 have raised a plea that the entire joint family properties were not fully included in the suit schedule mentioned properties. Further, the 1<sup>st</sup> defendant stated that the sale deed dated 05.09.1991 with respect to the 3<sup>rd</sup> item property was executed in favour of Amirdhalingam was only due to threatening and harrassment and there was no necessity to sell the said property and also, no consideration was received by the 1<sup>st</sup> defendant. Further, admitted that the 2<sup>nd</sup> defendant is acting as against the welfare of the joint family. With regard to the suit properties, the defendants 8 and 9 have admitted that the suit properties belonged to the plaintiff's father, Ganesa by way of partition dated 17.08.1979.

14) In order to establish their case, it is seen that the plaintiffs have produced Ex-A1 to A13 documents. On perusal, Ex-A1 is the certified copy of the registered family partition deed dated 17.08.1979, entered between the plaintiffs' father Ganesa Devar and his brothers with respect to their ancestral properties. Ex-A2 is the certified copy of the registered inam settlement deed dated 28.04.2010, executed by the 2<sup>nd</sup> defendant, Senthilkumar in favour of his wife Subha, the 7<sup>th</sup> defendant herein, with respect to item no.1 and 2 of the suit schedule properties. Ex-A3 is the certified copy of the registered sale deed dated 22.06.2011, executed by the 7<sup>th</sup> defendant, Subha in favour of one Durairaj, the 6<sup>th</sup> defendant herein, with respect to item no.2 of the suit schedule

properties. Ex-A4 is the certified copy of the registered sale deed dated 05.09.1991, executed by the plaintiffs' mother and brothers, the defendants 1 to 3 herein in favour of one Amirthalingam, the husband of the defendants 8 and 9 with respect to item no.3 of the suit schedule property. Ex-A5 is the legal notice dated 04.08.2011, issued on behalf of the plaintiffs to the defendants 1 to 7, calling upon them for partition. Ex-A6 are the acknowledgement cards (5 Nos.). Ex-A7 is the returned postal cover addressed to the 4<sup>th</sup> defendant. Ex-A8 is the legal notice dated 29.07.2011, issued on behalf of the plaintiffs to the Tahsildar, Arathangi and the Village Administration Officers, Pallathivayal group and Oorvani village, placing their objections for transferring the name in the Patta from the name of the plaintiffs' father to others name. Ex-A9 are the acknowledgement cards (2 Nos.). Ex-A10 is the encumbrance certificate dated 25.10.2011 for the property in S.F.No.19/5B i.e., the suit schedule item no.3 property. Ex-A11 is the Chitta (4 Nos.) with respect to item no.1, 2 and 5 in the name of the plaintiffs' father and his two brothers, item no.4 in the name of Kathayiammal and item no.3 in the name of the defendants 8 and 9. Ex-A12 is the marriage particulars receipt of the 2<sup>nd</sup> plaintiff, wherein, the date of marriage is mentioned as on 20.06.1990. Ex-A13 is the school transfer certificate of the 2<sup>nd</sup> plaintiff, wherein the date of birth is mentioned as 15.05.1972.

15) Further, with regard to their case, the 2<sup>nd</sup> plaintiff examined herself as Pw1 and has stated that the 1<sup>st</sup> plaintiff and the defendants 4 and 5 are her sisters and the 1<sup>st</sup> defendant is her mother and the defendants 2 and 3 are her brothers. Her father died during 1990 and till his death, he was maintaining the family. She and the 1<sup>st</sup> plaintiff got married when their father was alive. Further, she admitted that the suit properties are their grand father's ancestral property and her father was allotted with the suit properties by virtue of the partition deed dated 17.08.1979. Further, stated that they are seeking partition only in the remaining properties left by their father, except the properties, which were already sold by her father during his life time. She further admitted that the 2<sup>nd</sup> defendant is the elder son of their family and so far, no customary presents were provided by the

2<sup>nd</sup> defendant. Also, admitted that prior to this suit, she filed a complaint with the crime branch as against the defendants 2 to 7 with respect to the suit properties.

16) In this regard, it is seen that the 1<sup>st</sup> defendant, who examined herself as Dw1 has stated that she is blessed with six children and her husband died on 27.11.1990. She admitted that the items mentioned in the suit schedule properties alone belongs to her husband by virtue of partition. Also, admitted that all the properties are the ancestral properties of her husband and has stated that her husband and his brothers had entered into partition with respect to their fathers properties during the year 1979. Thereafter, her husband was in separate possession and enjoyment of his share of properties. She admitted that the item no.6 property house was built by her husband by obtaining loan and he was working as a Teacher. She admitted that till her husband was alive, no partition was entered into between her husband and her children. After the death of her husband, she and the defendants 2 to 5 were living together. The 2<sup>nd</sup> defendant is not taking care of her and only her daughters often visit her. She admitted that all her children have share in the suit properties and she is entitled to her husband's share. She went to the Registration office during the year 1992 and signed in the sale deed executed in favour of Amirthalingam in fear.

17) Further, it is seen that the 9<sup>th</sup> defendant, who examined herself as Dw2 has stated that their original sale deed was damaged due to Khaja cyclone and produced Ex-B3, the certified copy of the registered sale deed dated 05.09.1991, executed by the defendants 1 to 3 in favour of her husband, Amirthalingam with respect to item no.3 of the suit schedule property. Further, she has stated that she knew the plaintiffs and defendants 1 to 5 family very well. She knew that the fact that the 1<sup>st</sup> defendant and her husband, Ganesa Devar were blessed with four daughters and two sons and that there was no partition entered between them. Further, stated that when they purchased the item no.3 property, the plaintiffs' father, Ganesa Devar had expired and also, knew that the plaintiffs 1 and 2 were married. Also, admitted that the item no.3 property purchased by them is a valuable property and stated that she is doing agriculture in it. At the time of purchase, the 3<sup>rd</sup>

defendant was about 15 or 16 years old and his mother, the 1<sup>st</sup> defendant herein had signed on behalf of the 3<sup>rd</sup> defendant. One Vellaisamy had signed as witness in their sale deed and only her husband went to the Registration Office. Further, admitted that the other item properties are of less value and they are punjai and nanjai lands.

18) It is a settled principle of law that the initial burden is always on the plaintiff to prove their case by proper pleadings and adequate evidence (oral and documentary) in support of their case. While so, from the above analysis of pleadings and evidence, it is seen that the relationship between the plaintiffs and the defendants 1 to 5 are admitted one. The plaintiffs 1 and 2 and the defendants 2 to 5 are born out of the wedlock between the 1<sup>st</sup> defendant and one Ganesa Devar. Admittedly, the said Ganesa Devar died intestate on 27.11.1990. Also, the fact that the suit properties belonged to Ganesa Devar, by way of partition of their ancestral properties is found to be an admitted one. Thus, as per Section 58 of the Indian Evidence Act, the facts admitted need not be proved. Even then, as per Section 101 of Indian Evidence Act, the burden is on the plaintiffs to establish and prove their plea that the suit schedule properties are their joint family properties. On analysis of Ex-A1, partition deed, it reveals that Ganesa Devar had two brothers namely, Veerayya Devar and Pillia Devar. Also, it reveals that on 17.08.1979, the said three brothers had entered into a registered family partition deed, vide Ex-A1, wherein, the 'C' schedule properties were allotted to the share of the plaintiffs' father, Ganesa Devar and the same is found corroborated by the evidence of Pw1, Dw1 and Dw2.

19) Further, it is pertinent to note that though the defendants 2, 6 and 7 have denied the claim of the plaintiffs, the recitals of Ex-A2, registered inam settlement deed dated 28.04.2010, executed by the 2<sup>nd</sup> defendant in favour of his wife, the 7<sup>th</sup> defendant herein, with respect to item no.1 and 2 of the suit schedule properties reveals that the said properties are the joint family properties. Also, Ex-A4, the registered sale deed dated 05.09.1991, executed by the plaintiffs' mother and brothers (the defendants 1 to 3 herein) in favour of Dw2's husband Amirthalingam, with

respect to item no.3 of the suit schedule property reveals that item no.3 of the suit schedule property is also a joint family property. Ex-A11, chitta (4 Nos.) shows that except item no.3, all other properties are still in the name of the plaintiffs' father and his siblings. Thus, it is very much evident that the suit schedule properties are the joint family properties of the plaintiffs and the defendants 2 to 5. Thus, the plaintiffs are found to have established that their family possessed of joint family properties i.e., the suit schedule 'A' properties. When the nature of the property is established as joint, the presumption is that the plaintiffs are in joint possession unless they are excluded from such possession.

20) Further, Ex-A8 shows that the plaintiffs had taken steps swiftly as soon as they became aware of the deeds of the defendants 2 and 7, that were executed as against the welfare of their joint family by issuing a legal notice to the Tahsildar, Arathangi and the Village Administration Officers, Pallathivayal group and Oorvani village, placing their objections for transferring the name in the Patta from the name of their father to others name and the same is found to be received by the said officials, vide Ex-A9. Also, it is seen that before instituting this instant suit, the plaintiffs have called upon the defendants 1 to 7 for partition, vide Ex-A5 and the same is found to be received by the defendants 1 to 3 and 6, 7, vide Ex-A6. But, the said notice sent to the 4<sup>th</sup> defendant is found to be returned, vide Ex-A7. Though it returned, the 4<sup>th</sup> defendant participated in this instant suit by adopting the written statement filed by the 1<sup>st</sup> defendant. The contents of the legal notice, Ex-A5 shows that due to the act of the 2<sup>nd</sup> defendant executing inam settlement deed, vide Ex-A2, in favour of his wife, the 7<sup>th</sup> defendant herein, there arose problem among the plaintiffs and the defendants 1 to 5 in possessing and enjoying the suit schedule properties in common and thus, the cause of action is found to have arisen for the plaintiffs to institute this present suit. Also, it is apposite to mention that partition is an incident attached to the property, there is always a continuous cause of action for seeking the relief of partition and thus, the plaintiffs are entitled for the relief of partition even now.

21) Therefore, the main dispute against the claim of the plaintiffs is found to be raised by the 2<sup>nd</sup> defendant contending that plaintiffs and the defendants 4 and 5 are not entitled to partition since they were provided with sufficient customary presents during their marriage, which are twice the value of the shares to which they are entitled to. Another plea of the 2<sup>nd</sup> defendant is that an oral partition was entered into between the 2<sup>nd</sup> defendant and his brother, the 3<sup>rd</sup> defendant herein, with respect to the suit schedule properties. Now, since the plaintiffs have proved their initial burden that the suit schedule properties are their joint family properties and that they are entitled for their shares, the burden shifts to the 2<sup>nd</sup> defendant to prove his aforementioned pleas. Hence, the burden of proof lies on the 2<sup>nd</sup> defendant as per Section 102 of the Indian Evidence Act. But, with regard to his pleas, it is seen that the 2<sup>nd</sup> defendant has merely pleaded about the alleged oral partition without any details with respect to it. Whereas, the 3<sup>rd</sup> defendant, with whom the 2<sup>nd</sup> defendant alleged to have entered into an oral partition did not support the version of the 2<sup>nd</sup> defendant and has instead along with the defendants 1, 4 and 5 have admitted that the 2<sup>nd</sup> defendant is acting as against the welfare of their joint family. At this juncture, this court finds it relevant to cite the case law of Vineeta Sharma Vs. Rakesh Sharma & Ors. wherein, our Hon'ble Supreme Court in para 129 (v) has held as follows; "(v) In view of the rigor of provisions of Explanation to Section 6(5) of the Act of 1956, a plea of oral partition cannot be accepted as the statutory recognised mode of partition effected by a deed of partition duly registered under the provisions of the Registration Act, 1908 or effected by a decree of a court. However, in exceptional cases where plea of oral partition is supported by public documents and partition is finally evinced in the same manner as if it had been affected by a decree of a court, it may be accepted. A plea of partition based on oral evidence alone cannot be accepted and to be rejected outrightly." Thus, in the light of the aforementioned dictum, on analysing this present case, it is seen that the 2<sup>nd</sup> defendant has failed to establish affirmatively through documentary contemporaneous evidence of the alleged oral partition.

Hence, this court holds that the 2<sup>nd</sup> defendant has failed to prove his plea of oral partition in the aforementioned statutory recognised manner beyond reasonable doubt.

22) Further, Dw1, his own mother (the 1<sup>st</sup> defendant herein) in her evidence has stated that the 2<sup>nd</sup> defendant in the name of elder son has taken over all the income derived out of the properties and nobody has provided any customary presents to her daughters. Thus, the version stated by the 2<sup>nd</sup> defendant is found to be negated by the evidence of Dw1. Also, Pw1 has produced Ex-A12, her marriage particulars receipt to establish the date of her marriage was on 20.06.1990 and Ex-A13, school transfer certificate to show that her date of birth was on 15.05.1972. Above all, the pleadings of the 2<sup>nd</sup> defendant and the evidence of Pw1 and Dw1, it is very much abundantly clear that the main reason for denying shares in the properties is that the plaintiffs got married prior to 1988 and that they were provided with customary presents that were twice the value of their shares in the properties, which cannot be accepted for denying the plaintiff's lawful right of share over the suit properties in the light of the dictum laid by our Hon'ble Supreme Court in the case of Vineeta Sharma Vs. Rakesh Sharma & Ors.

23) Insofar as the suit schedule item no.3 property is concerned, the plaintiffs claim is that the said property was not sold for the welfare of the joint family and hence, they are entitled for share in the said joint family property. Even, the 1<sup>st</sup> defendant contended that the sale deed with respect to item no.3 of the suit schedule property was executed by her under threat and no consideration was received by her and hence, her children are all entitled to the said property. Per contra, the 2<sup>nd</sup> defendant contended that after the death of their father, they, the defendants 1 to 3 sold the 3<sup>rd</sup> item suit schedule property for valid consideration and with the benefits derived from their father's job along with their own earnings, performed the marriage of the defendants 4 and 5 in the presence of the 1<sup>st</sup> defendant with customary presents twice the value of the defendants 4 and 5's share in the property. Whereas, the defendants 8 and 9 have contended that on 05.09.1991, a registered sale deed was executed in favour of their husband for valid consideration. In this regard,

from the above analysis, it is seen that the defendants 1 to 3 had executed a sale deed in favour of one Amirthalingam (the husband of the defendants 8 and 9 herein) with respect to the item no.3 of the suit schedule property, vide Ex-A4 (Ex-B3) and the same is found to be substantiated by Ex-A10, encumbrance certificate. Further, it is seen that after the death of the said Amirthalingam, the revenue record with respect to the said item no.3 suit schedule property was found to be in the name of the defendants 8 and 9, vide Ex-A11. At the same time, it is seen that the daughters of Ganesa Devar (the plaintiffs 1 and 2 and the defendants 4 and 5 herein) were not made parties to the said sale deed, Ex-A4 and even their younger son (the 3<sup>rd</sup> defendant herein) was a minor at the time of execution of the sale. Further, from the evidence of Dw2 (the 9<sup>th</sup> defendant herein) it shows that the defendants 8 and 9 family were well aware about the fact that the suit properties are the joint family properties of Ganesa Devar and about the fact of the legal heirs of Ganesa Devar and the fact that there was no partition entered between the legal heirs of Ganesa Devar. Further, from the evidence of Dw2, it shows that the value of item no.3 is more than the remaining items. Since, now in this preliminary decree, only the shares of the plaintiffs are determined, this court leaves it open for the parties to decide over the allotment of the item of property from out of the suit schedule 'A' properties in the final decree petition.

24) Further, it is seen that the plaintiffs have pleaded that during his lifetime, their father Ganesa Devar sold some of his property and after his death, the remaining properties of Ganesa Devar are enjoyed by the plaintiffs and the defendants 1 to 5 as joint family property without any partition. In this regard, it is seen that Dw1 in her evidence has admitted that the items mentioned in the suit schedule properties alone belongs to her husband by virtue of partition. Further, normally, where the property is joint, the co-sharers are the representatives of each other. The co-sharer who might be in possession of the joint property shall be deemed to be in possession on behalf of all the co-sharers. At this juncture, this court finds it relevant to cite the case law of

Vineeta Sharma Vs. Rakesh Sharma & Ors. wherein, our Hon'ble Supreme Court in para 63 and 64 has held as follows;

“63. Considering the principle of coparcenary that a person is conferred the rights in the Mitakshara coparcenary by birth, similarly, the daughter has been recognised and treated as a coparcener, with equal rights and liabilities as of that of a son. The expression used in section 6 is that she becomes coparcener in the same manner as a son. By adoption also, the status of coparcener can be conferred. The concept of uncodified Hindu law of unobstructed heritage has been given a concrete shape under the provisions of section 6(1)(a) and 6(1)(b). Coparcener right is by birth. Thus, it is not at all necessary that the father of the daughter should be living as on the date of the amendment, as she has not been conferred the rights of a coparcener by obstructed heritage. According to the Mitakshara coparcenary Hindu law, as administered which is recognised in section 6(1), it is not necessary that there should be a living, coparcener or father as on the date of the amendment to whom the daughter would succeed. The daughter would step into the coparcenary as that of a son by taking birth before or after the Act. However, daughter born before can claim these rights only with effect from the date of the amendment, i.e., 09.09.2005 with saving of past transactions as provided in the proviso to section 6(1) read with section 6(5).”

“64. The effect of the amendment is that a daughter is made coparcener, with effect from the date of amendment and she can claim partition also, which is a necessary concomitant of the coparcenary. Section 6(1) recognises a joint Hindu family governed by Mitakshara law. The coparcenary must exist on 9.9.2005 to enable the daughter of a coparcener to enjoy rights conferred on her. As the right is by birth and not by dint of inheritance, it is irrelevant that a coparcener whose daughter is conferred with the rights is alive or not. Conferral is not based on the death of a father or other coparcener. In case living coparcener dies after 9.9.2005, inheritance is not by survivorship but by intestate or testamentary succession as provided in substituted section 6(3).”

Therefore, in the light of the aforementioned dictum, a conjoined consideration of the above evidence reveals that the suit schedule 'A' properties are joint family properties in nature and hence, the plaintiffs 1 and 2 are each entitled to 1/7 shares in the suit schedule 'A' properties along with their father and two brothers and two sisters. Since the plaintiffs father expired, his wife, his two sons and four daughters including the plaintiffs are each entitled to 1/7 share out of their father's 1/7 share. Therefore, the plaintiffs 1 and 2 are each entitled to 8/49 share. Thus, issues no.(i), (iv), (a) and (b) are answered accordingly.

**Issues No. (ii) :-**

25) The case of the plaintiffs is that their one of the brother (the 2<sup>nd</sup> defendant herein) along with their mother (the 1<sup>st</sup> defendant herein) had illegally executed a registered inam settlement deed dated 28.04.2010 in favour of their sister-in-law (the 7<sup>th</sup> defendant herein) with respect to item no.1 and 2 property as against the welfare of their joint family, who inturn had executed a registered sale deed dated 22.06.2011 in favour of a third party (the 6<sup>th</sup> defendant herein) with respect to item no.1 property. To substantiate their version, the plaintiffs produced Ex-A2, certified copy of the registered inam settlement deed dated 28.04.2010, executed by the 2<sup>nd</sup> defendant in favour of his wife, the 7<sup>th</sup> defendant herein, with respect to item no.1 and 2 of the suit schedule properties and Ex-A3, the certified copy of the registered sale deed dated 22.06.2011, executed by the 7<sup>th</sup> defendant in favour of a third party, one Durairaj, the 6<sup>th</sup> defendant herein, with respect to item no.2 of the suit schedule properties. With regard to this, the defendants 1, 3 to 5 have admitted in their written statement that the 2<sup>nd</sup> defendant is acting against the welfare of the joint family. As already discussed in issue no.(i), the recitals of Ex-A2 reveals that the item no.1 and 2 of the suit schedule properties are joint family properties. Since the suit schedule properties continued to be a joint family property, the settlement deed, vide Ex-A2 executed by the 2<sup>nd</sup> defendant in favour of his wife, the 7<sup>th</sup> defendant is not valid and void ab initio. Further, the 2<sup>nd</sup> defendant cannot execute gift with reference to a specific item of property out of the joint family property being the elder man or

kartha of the family. Therefore, the 2<sup>nd</sup> defendant being a coparcener cannot dispose of his undivided interest in coparcenary property by way of gift. Such transaction being void altogether, there is no estoppel or other kind of personal bar which precludes the plaintiffs from asserting their right to recover the transferred item of property. Thus, issue no.(ii) is answered accordingly.

Therefore, from the above discussions and reasoning, this court is of the view that the plaintiffs 1 and 2 are entitled for the relief of preliminary decree of partition in the suit schedule 'A' properties and the relief of declaration as prayed for with costs.

In the result, this suit is decreed and a preliminary decree of partition is passed in favour of the plaintiffs 1 and 2 declaring that they are jointly entitled to 16/49 share in the suit schedule properties with costs.

Dictated to the stenographer, directly computerized by her, corrected and pronounced by me in the open Court on this, the 24<sup>th</sup> day of August' 2020.

Principal District Judge,  
Pudukkottai.

**Plaintiff side witness :-**

Pw1 : Tmt. Kanimozhi

**Plaintiff side exhibits :-**

|        |            |   |
|--------|------------|---|
| Ex-A1  | 17.8.1979  | Partition deed (certified copy)                       |
| Ex-A2  | 28.04.2010 | Inam settlement deed (certified copy)                 |
| Ex-A3  | 22.06.2011 | Sale deed (certified copy)                            |
| Ex-A4  | 05.09.1991 | Sale deed (certified copy)                            |
| Ex-A5  | 04.08.2011 | Legal notice (copy)                                   |
| Ex-A6  | --         | Acknowledgement cards (5 Nos.)                        |
| Ex-A7  | --         | Returned cover (original)                             |
| Ex-A8  | 29.07.2011 | Notice to the Tahsildar, Aranthangi and others (copy) |
| Ex-A9  | --         | Acknowledgement cards (2 Nos.) (original)             |
| Ex-A10 | 25.10.2011 | Encumbrance certificate (S.F.No.19/5B) (original)     |

|        |            |  |
|--------|------------|--|
| Ex-A11 | --         | Chitta (4 Nos.)(certified copies)                        |
| Ex-A12 | 20.06.1990 | Marriage particulars receipt                             |
| Ex-A13 | 21.03.1989 | School Transfer Certificate of 2 <sup>nd</sup> plaintiff |

**Defendants side witnesses :-**

Dw1 : Tmt. Chandra

Dw2 : Tmt. Saraswathi

**Defendants side exhibits :-**

|       |            |                                  |
|-------|------------|----------------------------------|
| Ex-B1 | 13.07.2007 | Judgment in S.A.No.729/95 (copy) |
| Ex-B2 | 25.09.2019 | Plaint in O.S.No.209/2014 (copy) |
| Ex-B3 | 05.09.1991 | Sale deed (certified copy)       |

Principal District Judge,  
Pudukkottai.

Draft/Fair Judgment in

**OS.No.46/2011**

Dated : 24.08.2020  
Principal District Court,  
Pudukkottai.