

In the Court of the Principal Subordinate Judge, Tiruppur.

Present: Dr.V. Sree Vidya,
Principal Subordinate Judge,
Tiruppur.

Monday, the 09th day of March, 2026

(Thiruvalluvarandu, 2057 Visuvavasuv varudam, Maasi Thingal 25th day)

A.S.No.13/2019

(TNTI04-002532-2019)

1.P.Rangasamy alais Mani,

2.P.Ponnusamy

... Appellants

/Vs/

1.C.Marappan,

2.P.Marakkal,

3.P.Baby,

4.R.Palaniammal,

5.P.Chinnammal,

6.C.Kamalam,

7.C.Suresh,

8.M.Nisha, (Amended as per order in IA 2/2025, dated.25.03.2025)

... Respondents

This Appeal is coming on 09.03.2026 for final hearing before me in the presence of Thiru.S.Dharmaraj, Advocate for the Appellants, and Thiru.A.Manavalan, Advocate for the Respondents no.1, and Tmt.Chandraleka Nambiar, Advocate for the Respondent no. 8 to 10 and Appeal against R6, R7 is dismissed on 27.09.2024 and remaining Respondents are Exparte and upon perusing the Judgment and Decree of the Trial court, the grounds for appeal and other material records, and having stood over till this day for consideration, this court delivered the following :

JUDGMENT

This Appeal has been preferred by the Plaintiffs/ appellants being aggrieved by and dissatisfied with the Judgment and Decree dated 20.09.2018 passed by the learned District Munsiff, Tiruppur in O.S.No.34 of 2008, whereby the learned trial court, while granting a preliminary partition decree, directed division of the suit

property into three equal shares and allotted only two such shares to the Plaintiffs, thereby refusing to recognise and award the Plaintiffs' rightful entitlement of 5/6th share in the suit property as sought for in the original plaint.

2. Background and Nature of the suit:-

2.1. The suit O.S.No.34 of 2008 was filed by the Plaintiffs before the learned District Munsiff Court, Tiruppur, praying for a preliminary decree for partition directing the division of the suit schedule property, namely Survey Field Number 305/2, an extent of 3.35 acres situate in Mannarai Village, Tirupur Taluk (formerly Palladam Taluk), Coimbatore Registration District and now Tirupur Registration District, into six equal shares and to allot five such shares to the Plaintiffs jointly, with reference to good and bad soil, by metes and bounds, and to put them in separate possession of their allotted share with costs. The suit was filed under Section 37(2) of the Tamil Nadu Court Fees and Suit Valuation Act, the property being valued at Rs.1,00,000/- and a court fee of Rs.500/- affixed thereon.

2.2. The suit was filed on 21.01.2008. The cause of action was stated to have arisen on 12.01.2008 when the Defendants attempted to alienate the suit property including the share of the Plaintiffs. The Plaintiffs claimed title through their father Periya Pappa Naicker who, according to the Plaintiffs, was entitled to 1/2 share by virtue of the Settlement Deed (Ex.A1) dated 23.06.1925 bearing Registration No.936/1925 and had further acquired the remaining 1/3rd share under a Sale Deed (Ex.A2) dated 10.06.1964 from Mara Naicker, S/o. Periya Pappa Naicker, thereby becoming entitled to 5/6th share in totality of the suit property. The Defendants are legal heirs and claimants through the lineage of the co-sharers in the suit property.

3. Proceedings in the Trial Court and impugned Judgment:-

The learned District Munsiff Court framed the following issues for consideration:

- (i) Whether the Plaintiffs together are entitled to 5/6th share in the suit property?
- (ii) Whether the Defendants 1 and 2 are each entitled to 1/6th share in the suit property?

(iii) Whether the Plaintiffs are entitled to partition and separate possession as prayed for?

(iv) To what other reliefs?

3.1. On the side of the Plaintiffs, P.W.1 the 1st Plaintiff Rangasamy@Mani was examined. Documents Exhibits A1 to A10 were marked. On the side of the Defendants, D.W.1 the 1st Defendant Chinnasamy and D.W.2 the 6th Defendant Palaniammal were examined. Documents Exhibits B1 to B16 were marked.

3.2. The learned trial court, after consideration of the pleadings and evidence, held that the Settlement Deed (Ex.A1) dated 23.06.1925 conferred equal 1/4 share upon each of the four recipients, viz. Subba Naicker, Pappammal, Periya Pappa Naicker and Chinna Pappa Naicker, and that the contention of the Plaintiffs that Subba Naicker and Pappammal were merely guardians of the minor children was not supported by the recitals of the document. The trial court further held that after the death of Subba Naicker, the suit property was orally partitioned into three equal shares among Pappammal, Periya Pappa Naicker and Chinna Pappa Naicker. On this basis, the trial court concluded that the Plaintiffs' father was entitled only to 2/3rd share in the suit property. Accordingly, the suit was decreed for division of the property into three equal shares and allotment of two such shares to the Plaintiffs jointly, with liberty to the Plaintiffs to have their share separated in accordance with law. No order as to costs was passed.

4. Grounds of Appeal:-

The Appellants have assailed the impugned Judgment and Decree on the following principal grounds, which this Court has carefully considered:

4.1. That the learned trial court has totally failed to consider and correctly construe the recitals of the Settlement Deed (Ex.A1) dated 23.06.1925 in its proper legal import and has erroneously misconstrued the document by treating Subba Naicker and Pappammal as co-beneficiaries when they were in fact the guardians of the minor sons.

4.2. That the learned trial court has completely failed to appreciate that the parents' names in Ex.A1 were given only for the purpose of identification of the minor donees, and that the intention of the donors was to create title and ownership exclusively in favour of the minor sons, namely Periya Pappa Naicker and Chinna Pappa Naicker.

4.3. That the findings of the trial court are against the weight of evidence, the probabilities of the case, and the well-established principles governing construction of documents under the Transfer of Property Act, 1882 and the Indian Evidence Act, 1872.

4.4. That the learned trial court has failed to discuss each issue separately and individually as mandated by Order XX Rule 5 of the Code of Civil Procedure, 1908.

4.5. That the trial court wrongly assumed an oral partition among Pappammal, Periya Pappa Naicker and Chinna Pappa Naicker after the death of Subba Naicker, ignoring the relevant documentary chain.

5. Points for determination:-

Having regard to the grounds of appeal, the pleadings in the court below and the evidence on record, the following points arise for determination in this Appeal:

5.1. Point No.1: Whether the learned trial court was correct in construing the Settlement Deed (Ex.A1) dated 23.06.1925 as conferring equal 1/4 share upon Subba Naicker, Pappammal, Periya Pappa Naicker and Chinna Pappa Naicker, or whether Subba Naicker and Pappammal were merely guardians of the minor donees under the said deed?

5.2. Point No.2: Whether the Plaintiffs' father Periya Pappa Naicker was entitled to 1/2 share of the suit property under Ex.A1 and subsequently to 5/6th share upon purchase of the additional 1/3rd share under Ex.A2 dated 10.06.1964, and whether the Plaintiffs as his legal heirs are entitled to 5/6th share as prayed for?

5.3. Point No.3: Whether the impugned Judgment and Decree is liable to be set aside and the Appeal allowed?

6. Discussion and analysis:-

Point No.1- Construction of the settlement deed Ex.A1, dated 23.06.1925:

6.1. The pivotal question in this appeal turns upon the correct legal construction of the Settlement Deed (Ex.A1) dated 23.06.1925. The entire fabric of the Plaintiffs case rests upon the interpretation that the said deed conferred title exclusively upon the two minor sons – Periya Pappa Naicker and Chinna Pappa Naicker and that their parents, Subba Naicker and Pappammal, were mentioned only in their representative capacity as guardians. The trial court negated this contention and held that all four persons were equal beneficiaries. This Court, upon a careful and meticulous scrutiny of the documentary evidence and applicable legal principles, finds that the trial court has clearly erred in its approach to documentary construction.

6.2. The cardinal principle governing construction of documents is that the intention of the parties must be gathered from the entire instrument read as a whole. This principle is firmly embedded in Section 91 and Section 92 of the Indian Evidence Act, 1872. Section 91 of the Indian Evidence Act provides that when the terms of a contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved, no evidence of any oral agreement or statement shall be admitted as between the parties for the purpose of contradicting, varying, adding to or subtracting from its terms. Section 92 further reinforces this mandate. The document itself is the primary evidence of what the parties intended.

6.3. Section 94 of the Indian Evidence Act further provides that when the language used in a document is plain in itself and when it applies accurately to existing facts, evidence may not be given to introduce a different meaning. The recitals extracted and reproduced in the trial court judgment from Ex.A1 Settlement Deed are most instructive. The Tamil recitals of the Settlement Deed (Ex.A1) plainly indicate that the property was being settled upon the minor sons Periya Pappa Naicker (then aged 5 years) and Chinna Pappa Naicker (then aged 2 years), and that their guardian/ grandfather Ranga Naicker, S/o. Nanja Naicker was appointed as guardian for the minor

donees for the purpose of representing them in the deed. The recital expressly identifies the two children as the beneficiaries and the guardians as merely representational parties.

6.4. A settlement or gift deed under the Transfer of Property Act, 1882 must be construed so as to give effect to the true intention of the donor(s). Section 8 of the Transfer of Property Act, 1882 provides that unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property. When a gift is made to minors, it is a well-established principle of law, affirmed by a catena of decisions of the Honourable Supreme Court of India and the High Courts, that the mention of the name of the parent or guardian in the deed is only for the purpose of identification of the minor beneficiary or as the natural guardian representing the minor, and it does not vest any independent title in such guardian. The guardian takes no beneficial interest merely by reason of being named in a document as the guardian or natural protector of the minor donee.

6.5. The trial court has committed a grave error in reading the presence of the names of Subba Naicker and Pappammal in Ex.A1 as evidence of their being co-beneficiaries. The test to be applied is not the mere mention of the name but the substance and intent discernible from the document. When Ex.A1 is read as a whole, it is manifest that: (a) the donors were Ranga Naicker, Pappa Naicker, Mara Naicker and Marammal; (b) the donees/beneficiaries were the two minor sons Periya Pappa Naicker and Chinna Pappa Naicker; (c) the grandfather Ranga Naicker, S/o. Nanja Naicker was appointed as guardian specifically to represent the minors in the deed; and (d) Subba Naicker and Pappammal are referenced in the parental/guardian context, not as independent beneficiaries receiving an interest in their own right. This construction is consistent with the ordinary conveyancing practice of the era and with the plain language of the document.

6.6. The trial court's reliance upon the absence of an express recital describing Subba Naicker and Pappammal as 'guardians' in so many words is an overly narrow and

technical reading that ignores the true substance and context of Ex.A1. The Indian Evidence Act, Section 95 to Section 98, provides elaborate guidance on resolving patent and latent ambiguities in documents. When a document is susceptible of two constructions – one that renders the transaction efficacious and gives effect to the intent of the parties, and another that leads to an absurd or unintended result courts are bound to prefer the former. Construing Ex.A1 as creating a beneficial interest in the parents, who were themselves among the joint family members of the very donors, would be repugnant to the nature and character of a settlement deed intended to provide for minor children.

6.7. It is further pertinent to note that the Settlement Deed being in Tamil, the recitals must be understood in the context of contemporaneous Tamil conveyancing practice in which names of parents and guardians are conventionally included to identify minor donees and not to create an independent beneficial interest in such adults. The extrinsic evidence and the subsequent conduct of the parties particularly the fact that Pappammal sold her one-third share to her third son Pappa Naicker@ChinnaPappaNaicker under Ex.B4 dated 28.06.1956, treating herself as having derived a one-third share from the post-Subba Naicker intestate succession and not from Ex.A1 – itself supports the conclusion that Ex.A1 was never understood by the family as conferring a beneficial share upon Subba Naicker and Pappammal in their personal capacity.

6.8. Accordingly, this Court holds that Ex.A1 Settlement Deed dated 23.06.1925 was executed by the donors in favour of the two minor sons Periya Pappa Naicker and Chinna Pappa Naicker, each taking 1/2 share in the suit property, with Subba Naicker, Pappammal and the appointed guardian Ranga Naicker appearing in the deed purely in their representative and custodial capacity and not as independent beneficiaries. Point No.1 is answered accordingly in favour of the Appellants.

7. Point No.2- Plaintiff's entitlement to 5/6th share:-

7.1. Having held that Periya Pappa Naicker was entitled to 1/2 share under Ex.A1, the next question is whether the Plaintiffs, as his legal heirs, are entitled to 5/6th share

upon additionally taking into account the purchase of 1/3rd share by Periya Pappa Naicker under Ex.A2.

The documentary evidence establishes the following chain of title with crystalline clarity, and the trial court's own discussion of the documents has not seriously disputed these factual transactions:

7.2. Under Ex.A1 dated 23.06.1925, Periya Pappa Naicker and Chinna Pappa Naicker each took 1/2 share in S.F.No.305/2 admeasuring 3.35 acres.

7.3. Chinna Pappa Naicker, the co-sharer, sold his entire 1/3rd share (after the post-Subba Naicker succession reassignment) measuring $1.11\frac{3}{4}$ acres to Mara Naicker, S/o. Periya Pappa Naicker, under Ex.A5/Ex.B1 dated 19.11.1956. This alienation of Chinna Pappa Naicker's share resulted in the absolute extinguishment of his own title in the suit property.

7.4. Thereafter, Mara Naicker, S/o. Periya Pappa Naicker, sold back this $1.11\frac{3}{4}$ acres (i.e., 1/3rd share) to Periya Pappa Naicker, the Plaintiffs' father, under Ex.A2 dated 10.06.1964.

7.5. PappaNaicker@ChinnaPappaNaicker received 1/3rd share from his mother Pappammal under Ex.B4 dated 28.06.1956. He subsequently alienated his entire share under Ex.B5 dated 09.11.1957 and Ex.B7 dated 18.06.1959 in favour of Mara Naicker, S/o. Nanja Naicker and Muthusamy respectively, thereby divesting himself of all title.

7.6. The legal consequence of the purchase under Ex.A2 is beyond dispute. A purchase of property by a person already holding a share in the same property results in the accretion of the purchased share to his existing holding. Section 8 of the Transfer of Property Act, 1882, read with the general principle that a purchase of property confers upon the transferee the entire interest which the transferor was capable of passing, makes it clear that upon Periya Pappa Naicker purchasing the 1/3rd share of Chinna Pappa Naicker's lineage (as held by Mara Naicker), Periya Pappa Naicker's total holding in the suit property became $\frac{1}{2} + \frac{1}{3} = \frac{5}{6}$ th share in the suit property.

7.7. The trial court's central error in relation to this point was its acceptance of the Defendants' contention regarding an alleged oral partition of the suit property into three equal shares among Pappammal, Periya Pappa Naicker and Chinna Pappa Naicker after the death of Subba Naicker. The trial court used this hypothetical oral partition as the foundation for restricting the Plaintiffs' share to 2/3rd. This Court holds that this approach is fundamentally flawed for the following reasons:

7.8. First, under Section 92 of the Indian Evidence Act, oral agreements inconsistent with the terms of written documents cannot be proved. The Settlement Deed Ex.A1 is a registered document. Any claim of an oral partition altering the rights under Ex.A1 must satisfy the requirements of law, including the provisions of Section 17 of the Registration Act, 1908 and Section 54 of the Transfer of Property Act, 1882, which mandate registration for transfers of immovable property of value exceeding one hundred rupees. An unregistered and unwritten oral partition cannot override the rights established by a registered Settlement Deed.

7.9. Second, the circumstance that Pappammal executed Ex.B4 dated 28.06.1956 conveying '1/3rd share' to PappaNaicker@ChinnaPappaNaicker, and that Chinna Pappa Naicker executed Ex.A5/Ex.B1 dated 19.11.1956 conveying 1/3rd share to Mara Naicker, is consistent with the post-Subba Naicker intestate devolution of Subba Naicker's 1/4 share under the Settlement Deed among his widow and surviving sons. These transactions do not amount to the oral partition of the underlying Settlement Deed rights. The trial court erroneously treated the parties' acceptance of a three-way distribution of Subba Naicker's share after his intestate death as a wholesale oral partition of the entire suit property that overrode the pre-existing registered Settlement Deed. This is a confusion of two distinct legal processes.

7.10. Third, even if an oral partition were to be accepted for the limited purpose of argument, such a partition would bind only those who participated in it. The Plaintiffs, as legal heirs and successors of Periya Pappa Naicker, are entitled to the full benefit of Periya Pappa Naicker's title including the 1/3rd share that was repurchased by him under Ex.A2 dated 10.06.1964. The purchase under Ex.A2 is itself a registered

document, duly proved in evidence. Section 54 of the Transfer of Property Act, 1882 provides that the sale of immovable property is made only by a registered instrument. Ex.A2, being a registered Sale Deed, conclusively establishes the transfer of the 1.11³/₄ acres to Periya Pappa Naicker and the trial court has not found Ex.A2 to be invalid or ineffective. The purchase under Ex.A2 cannot be set at naught merely because the trial court has imported into the case an oral partition theory for which there is no adequate registered or otherwise legally sufficient evidence.

7.11. The principle in Section 91 of the Indian Evidence Act is that the contents of documents must be proved by the documents themselves. The entire chain of registered documents – Ex.A1, Ex.A2, Ex.A5/Ex.B1, Ex.B4, Ex.B5, Ex.B7, Ex.B9 – when read together, lead unerringly to the conclusion that Periya Pappa Naicker came to hold 5/6th share in the suit property, and that the respective shares of Chinna Pappa Naicker and PappaNaicker@ChinnaPappaNaicker were alienated away from those lineages, with the 1st Respondent/Defendant having independently purchased 0.56 cents (1/6th share) from Muthusamy under Ex.B9 dated 22.05.1985. The 2nd Respondent/Defendant similarly claims 0.56 cents under a separate purchase deed.

7.12. In so far as the trial court's reliance upon the Partition Deed Ex.A6/Ex.B15 dated 03.09.2009 is concerned, this Court notes that the trial court looked into Ex.A6 only for the limited purpose of confirming the relinquishment of share by the daughters of Periya Pappa Naicker in S.F.No.305/2. The trial court's observation that the registered Partition Deed was executed for a larger extent is noted, but this in no way detracts from the legal analysis of the share entitlement which must ultimately be determined with reference to the registered title deeds.

7.13. With reference to the plea of non-joinder of necessary parties raised by the Defendants regarding the sisters of the Plaintiffs and daughters of Periya Pappa Naicker, this Court finds that the trial court itself recorded that the daughters of Periya Pappa Naicker – Rangammal, Nanjammal and Pappathi – had not taken any share in S.F.No.305/2 and had been allotted other properties under Ex.A6 Partition Deed. The non-joinder of parties who have no subsisting interest in the suit property does not

vitiating the suit, in view of the provisions of Order I Rule 9 of the Code of Civil Procedure, 1908 and the law as settled by the Honourable Supreme Court that a suit is not liable to be dismissed merely on the ground of non-joinder unless it results in prejudice to the other party.

7.14. This Court accordingly holds that the Plaintiffs, as the legal heirs of Periya Pappa Naicker (as established by Ex.A3 and Ex.A4), are entitled to 5/6th share in the suit property viz., S.F.No.305/2 admeasuring 3.35 acres in Mannarai Village, Tirupur Taluk. The trial court's finding restricting the Plaintiffs' share to 2/3rd is set aside. Point No.2 is answered accordingly in favour of the Appellants.

8. Point No.3- Whether the impugned Judgment is liable to be set aside:-

8.1. In view of the findings on Points No.1 and 2 above, this Court holds that the impugned Judgment and Decree dated 20.09.2018 in O.S.No.34 of 2008 of the learned District Munsiff, Tiruppur, is liable to be set aside to the extent it restricts the Plaintiffs' share to 2/3rd of the suit property. The Appellants are entitled to the reliefs as prayed for in the original plaint. Point No.3 is answered accordingly.

9. Result:-

9.1. In the result, this Appeal is allowed. The Judgment and Decree dated 20.09.2018 passed in O.S.No.34 of 2008 by the learned District Munsif Court, Tiruppur, is hereby set aside. The suit O.S.No.34 of 2008 stands decreed as prayed for, and a Preliminary Decree for Partition is granted in the following terms:

9.2. The suit schedule property, viz., land in S.F.No.305/2 admeasuring 3.35 acres (i.e., 3 acres 35 cents) situate in Mannarai Village, Tirupur Joint-11 Sub-Registration, Tirupur Taluk, Tirupur District, is hereby directed to be divided into six (6) equal shares by metes and bounds and with reference to good and bad soil.

9.3. five such equal shares out of the said six equal shares shall be allotted to the Appellants/Plaintiffs jointly.

9.4. The Appellants/Plaintiffs are at liberty to have their share separated in accordance with law by applying for a Final Decree.

9.5. Considering the relationship between the parties, there shall be no order as to costs throughout.

Dictated to the typist, typed by him in the computer, corrected and pronounced by me in the open court on this the 09th day of March, 2026.

Principal Subordinate Judge,
Tiruppur

List of Ex. on Both sides : - **Nil**

Principal Subordinate Judge,
Tiruppur

**Fair / Draft Judgment in
A.S.No.13/2019
Dated:09.03.2026
PSJ Court, Tiruppur**