

**IN THE COURT OF THE II ADDITIONAL DISTRICT & SESSIONS JUDGE,
THANJAVUR.**

**Present :Thiru.P. Nagarajan, M.A.M.L.,
II Additional District & Sessions Judge, Thanjavur.**

Saturday the 18th day of April 2026

(Thiruvalluvar Andu 2057 - Panguni Matham 27th day)

Original Suit No. 121/2023

CNR.No.TNTJ-00000207-2023

1)Jayalakshmi

2) Umarani

3) Parvathi

4) Vasanthakumari

... Plaintiffs

VS

Balachandar

...Defendant

This suit was taken on file on 19.05.2023 in the Principal District Court, Thanjavur and made over to this court on 06.06.2023. In this court this suit came up for final hearing before me on 16.04.2026 in the presence of Thiru. **D.Udayakumar**, Advocate for the Plaintiff and of Tmt.N.Poongothai, Advocate for the defendant and upon hearing the arguments of both sides, upon perusal of the material records pertaining to the case and the matter having stood over for consideration till this date, this court delivered the following

JUDGMENT

This suit has been filed by the plaintiff to pass a preliminary decree for partition in favour of the plaintiffs¹ against the defendants allotting 4/5 share in the suit properties to plaintiff by metes and bounds for convenient enjoyment of the suit property to plaintiff and to pass a final decree in terms of preliminary decree and for costs of the suit.

2) The Gist of the plaint filed by the plaintiff:

The disputed property consists of a plot measuring approximately 1,911 square feet comprising portions of Town Survey Nos. 1012 and 103 situated on the northern side of Selliyanman Temple Street, Karunthattankudi, within Block 36 of Ward 2 Municipal, Karunthattankudi Sub-Registration District, Thanjavur Registration District, the property further includes a "Madras Terrace" structure measuring 420 square feet and a thatched roof structure built over an area of 695 square feet. This property specifically refers to the 1,318.73 square feet of land allotted by the Court to Kesavan, the unmarried brother of the plaintiffs. The suit property was originally purchased on 20.7.1979 from one Leelavathi of Thanjavur by Duraimanickam the father of the plaintiffs and the defendant and had been in his possession and enjoyment thereafter. Following the demise of the said Duraimanickam on 23.10.1998, the property devolved upon his wife, Rajam, and his sons and daughters, and has since been in the joint possession and enjoyment of all of them. In this context, regarding the acquisition of the suit property, a partition suit was instituted in the Principal Sub-Court, Thanjavur, against Plaintiffs 1 to 3, as well as

Duraimanickam's wife Rajam, his son Kesavan, and the 4th Plaintiff who is also the Defendant, Balachandar. In the said suit, a preliminary decree was issued on 11.07.2001, followed by a final decree on 28.08.2015. Accordingly, out of the total extent of the suit property comprising 1,911 square feet in total, of which 1,837.50 square feet constituted the land area an extent of 1,318.73 square feet was allotted to Duraimanickam's son, Kesavan, while 308 square feet was allotted to the Defendant. In the interim, Rajam the mother of the plaintiffs and the defendant passed away. Subsequently, Plaintiffs 1 and 3, having undertaken to release their respective shares in the suit property to Kesavan, executed and registered a Deed of Release (Partition) bearing Document No.1835/2001 on 08.10.2001 through this instrument, they surrendered to Kesavan their own shares in the suit property, in addition to the share already held by him. Similarly, the 2nd Plaintiff, having undertaken to release his share to Kesavan, executed and registered a Deed of Release bearing Document No. 2039/2003 on 05.11.2003, thereby surrendering his share in the suit property to Kesavan, alongside the share already held by the latter. Likewise, the 4th Plaintiff, having undertaken to release his share to Kesavan, executed and registered a Deed of Release for Partition bearing Document No. 3954/2008 on 26.12.2008, thereby surrendering his share in the suit property to Kesavan, alongside the share already held by the latter. Under these circumstances, Kesavan passed away on 14.02.2020, without having made any testamentary disposition regarding the suit property; consequently, the plaintiffs have acquired the status of co-sharers in the said property. Subsequently, upon learning that the defendant had illegally trespassed into the suit

property along with his family members and had been in occupation of it since February 2021, the plaintiffs demanded that their 4/5th share in the property be partitioned and allotted to them. In response, the defendant promised to effect a proper partition in due course and requested permission to continue residing in the property until such time. However, on 01.12.2022, the defendant reneged on his promise, declaring that he could not partition and allot the plaintiffs' share to them; furthermore, he attempted to coerce the plaintiffs into executing a Release Deed relinquishing their share in the property in his favor. In addition to these actions, the defendant is attempting to create encumbrances on the suit property by fabricating illegal documents pertaining to it. Hence the suit.

(3) Gist of written statement filed by the defendant:

The averments stated in the plaint are all false, except those that are deemed fit in the circumstances of the case. The suit property is an asset that was purchased through self-acquisition by Duraimanickam the father of the Plaintiff and the Defendants and was enjoyed by him together with his family members. Following Duraimanickam's demise, his wife, Rajam, along with their sons and daughters, continued to enjoy the property jointly. Subsequently, a dispute arose among the Plaintiff, the Defendants, their mother, and the deceased Kesavan, consequently, Kesavan filed Original Suit No.92/1999 in the Principal Sub-Court, Thanjavur, seeking a partition of the property, wherein a decree was issued allotting a 1/7th share to Kesavan. Thereafter, Plaintiffs 1 to 4 received from Kesavan the monetary value corresponding to their respective shares calculated based on the prevailing market

value at that time and executed a Deed of Release relinquishing their partition rights in favor of Kesavan, the brother of the Defendants. Subsequently, the defendant's brother, Kesavan, filed a petition seeking the issuance of a final decree. In that interlocutory petition No.58/2006, a 5/6 share of the property was allotted to Kesavan, and a final decree was issued accordingly. While he was in enjoyment of this share, Kesavan passed away in a vehicular accident on February 18, 2020. The defendant himself performed Kesavan's final rights. The defendant has since vacated the rented house in which he was residing and, along with his family, is currently in enjoyment of the 5/6 share of the property that belonged to the deceased Kesavan. Since the plaintiffs had already relinquished their share rights through a Deed of Release, they possess no share rights what so ever in the property of the deceased Kesavan. Furthermore, under the laws of intestate succession, the defendant is the sole legal heir of Kesavan. consequently, the plaintiffs hold no share rights in the property. This suit has been filed with the fraudulent intent of misappropriating the property from the defendant. Hence pray to dismiss the suit with cost.

(4) In this suit, the following issues were framed on 18.12.2023

- 1) Whether the plaintiffs are entitled to 4/5 shares in the suit property and for preliminary decree as such?
- 2) What other decree the plaintiffs are entitled to?

(5) In this suit, on the plaintiff's side the 2nd plaintiff was examined as PW.1 3rd plaintiff was examined as PW.2 and 3rd plaintiff was examined as PW.3 and Ex.A1 to Ex.A.15 were marked through PW.1. On the defendant no evidence

and documents. At the time of cross examination of PW.1 Ex.B1 was marked.

(6) The learned counsel for plaintiffs submitted that this property specifically refers to the 1,318.73 square feet of land allotted by the Court to Kesavan, the unmarried brother of the plaintiffs. The suit property was originally purchased on 20.7.1979, from one Leelavathi of Thanjavur by Duraimanickam the father of the plaintiffs and the defendant and had been in his possession and enjoyment thereafter. Following the demise of the said Duraimanickam on 23.10.1998, the property devolved upon his wife Rajam, and his sons and daughters, and has since been in the joint possession and enjoyment of all of them. In this context, regarding the acquisition of the suit property, a partition suit was instituted in the Principal Sub-Court, Thanjavur, against Plaintiffs 1 to 3, as well as Duraimanickam's wife Rajam, his son Kesavan, and the 4th Plaintiff who is also the Defendant Balachandar. In the said suit, a preliminary decree was issued on 11.07.2001, followed by a final decree on 28.08.2015. Accordingly, out of the total extent of the suit property comprising 1,911 square feet in total, of which 1,837.50 square feet constituted the land area an extent of 1,318.73 square feet was allotted to Duraimanickam's son, Kesavan, while 308 square feet was allotted to the Defendant. In the interim, Rajam the mother of the plaintiffs and the defendant passed away. Subsequently, Plaintiffs 1 and 3, having undertaken to release their respective shares in the suit property to Kesavan, executed and registered a Deed of Release Under these circumstances, Kesavan passed away on 14.02.2020, without having made any testamentary disposition regarding the

suit property, consequently, the plaintiffs have acquired the status of co-sharers in the said property. Subsequently, upon learning that the defendant had illegally trespassed into the suit property along with his family members and had been in occupation of it since February 2021, the plaintiffs demanded that their 4/5th share in the property be partitioned and allotted to them. Hence pray for allowing the suit.

(7) The learned counsel for defendant submitted that Plaintiffs 1 through 4 received from Kesavan the monetary value corresponding to their respective shares calculated based on the prevailing market value at that time and executed a Deed of Release relinquishing their partition rights in favor of Kesavan, they possess no share rights whatsoever in the property of the deceased Kesavan. Furthermore, under the laws of intestate succession, the defendant is the sole legal heir of Kesavan, consequently, the plaintiffs hold no share rights in the property. This suit has been filed with the fraudulent intent of misappropriating the property from the defendant. Hence pray to dismiss the suit with cost.

(8) The plaintiffs and defendants are sisters and brothers. They are the sisters and brothers of deceased Kesavan. All the legal heirs are sons and daughters of deceased Duraimanickam and Rajam. The property originally purchased by Duraimanickam who died intestate, hence original suit number 91/1999 was filed before principal sub court, Thanjavur and the same was decreed by the same court partition was granted. All the plaintiffs, defendant and the deceased Kesavan his mother Rajam are also died intestate in the pending suit. Hence the property

divided in to each legal heir of different dates. All the plaintiffs and the defendant are the legal heir of the deceased Kesavan who died intestate without marriage and issue and the same as 2nd class legal heirs. The plaintiffs proved the case and prayed for partition. The defendant approached this court filed written statement and cross examination the witness of plaintiff side and Ex.B1 was marked. After the evidence of plaintiff side the defendant preferred an appeal. Several chances given, several time application filed. Chances given not come forward to court to adduce his evidence. Hence prayed for allowing the suit.

(9) On the side of the defendant several chances given, even not come forward for defendant side evidence from 14.08.2025 to till date. Hence the defendant side closed without arguments also not come forward after opportunities given. Hence arguments of defendant side heard.

(10) **Issue NO.1**: Whether the plaintiffs are entitled to 4/5 shares in the suit property and for preliminary decree as such?.

Admittedly from the both side evidence this court found that the suit property was purchased by Duraimanickam and enjoyment by him. After his death as per OS.92/1999 the suit was decreed, 1/6 th share of partition already allowed to the each legal heirs. After the preliminary decree the said Kesavan who deceased got the share of plaintiffs by registered document. Kesavan enjoyed 1,318.73 sq.ft along with the shares of plaintiff. Suddenly due to accident Kesavan died intestate without marriage and issue. His father and mother also predeceased. Hence the plaintiffs and the defendant becomes the 2nd class legal heirs of the deceased

Kesavan. From the evidence and documents of the plaintiffs, the status of Kesavan and the motor accident unexpected demise of Kesavan are proved and admitted by both side. But the defendant side in the cross of PW.1 questioned regarding release deed and in the cross examination questioned accident regarding motor accident also and inquired with PW.1 and in further signature of the plaintiffs also denied and further questioned that the defendant in order to save the life of Kesavan went to sale the property in the year of Kesavan (i.e.,) also questioned.

(11) From the evidence of PW.2 also same sort of cross examination made. Being all the plaintiffs are already received partition and in turn yet to the Kesavan after getting amount not entitled to share in the suit property is main defence of the defendant.

(12) From the evidence and documents of the plaintiff side it is found that the relation ship of the plaintiff and defendant were admitted. Since they are the children of deceased Duriamackam and Rajam. The deceased Kesavan is the unmarried brother of plaintiffs and defendant. Kesavan parents also pre-deceased and also the Kesavan not having any other issues. Therefore there is no 1st class legal heir. Only 2nd class legal heirs available as per Hindu Law All the plaintiffs and defendant become the legal heirs of deceased Kesavan as 2nd class. Admittedly previous OS.No.92/1999 passed preliminary decree and final decree. The deceased Kesavan got 1/6th share and also got the release deed from the plaintiffs 1 to 4 by way of paying money to them. After got four release deed and

the share of the Keavan 1,318.73 sq.ft was belonged to Kesavan and Kesavan enjoying the same sudden demise he died in the motor accident admitted in the Thanjavur medical college hospital, since the plaintiffs and defendant being the legal heirs entitled to share in the suit property.

(13) But in the instant case the defendant submitted that already the plaintiffs are released the share to the Kesavan and hence they are not right to ask once again share in the suit property is the main contention and also the defendant contented that his real receipts of medical. But in the instant case as on verification is Kesavan died in the Government medical college hospital. Admittedly the plaintiffs executed the release deed upon the Kesavan. Admittedly the plaintiffs executed release deed upon the Kesavan, if Kesavan executed in any person the plaintiffs and defendant are not entitled to share the suit property.

(14) But in the instant case even though the plaintiffs are executed release deed upon Kesavan but if the deceased Kesavam died in the medical college hospital due to motor accident. Hence the release deed made by the plaintiffs will not act against them. Since the plaintiffs and defendant becomes 1st class legal heirship would be Duraimanickam died. Now when the Kesavan died the plaintiffs and defendant becomes 2nd class legal heir was when the legal document has not upon the money demanding is borrowed since the instant case the deceased Kesavan not executed the any testamentary document. As per Hindu law class 2 brothers and sisters are available legal heirs. Therefore the plaintiffs and the defendant becomes the 2nd class legal heirs. The defendant main contention

but not come forward to this court to prove his contention, no testamentary document filed for the purpose of medical expenses incurred for Kesavan. Since he admitted at Government medical college hospital. The contention made by the defendant that the plaintiffs are not entitled for share in the property since they are executed release deed upon Kesavan, the plaintiffs are against Kesavan but in the 1st class legal heir ship not entitled to share in the suit property becomes Kesan. But in the instant case the deceased Kesavan sisters the relation will not act against the plaintiffs. Therefore the plaintiffs along with the defendant becomes 2nd class legal heir and entitled for equal share as 1/5 totally the 4/5 the share.

(15) **Issue No.2:** Necessary relief was granted in the issue No.1 Hence there is no other relief to the plaintiffs.

In the result, the suit is decreed as prayed for without cost since the parties are sisters and brothers.

This Judgment is dictated to Steno-typist by me, transcribed by her in computer, corrected and pronounced by me in the open court, this the **18th day of April 2026.**

**II Additional District and Sessions Judge,
Thanjavur.**

Plaintiff's side Witness:

PW.1	Umarani (2 nd plaintiff)
PW.2	Parvathi (3 rd plaintiff)
PW.3	Vasanthakumari (4 th plaintiff)

Plaintiffs' side Exhibits

Ex.A1	20.07.1979	Sale deed executed by Leelavathi in favour of Duraimanickam - original
Ex.A2	03.11.1998	Death certificate of Duraimanickam - original
Ex.A3	26.05.1999	Legal heir certificate of Duraimanickam
Ex.A4	11.07.2001	Certified copy of decree in OS.92/1999
Ex.A5	28.08.2015	Certified copy of order in IA.58/2006 in OS.92/1999
Ex.A6	08.10.2001	Release deed executed by 1 and 3 plaintiffs in favour of Kesavan
Ex.A7	05.11.2003	Release deed executed by 2nd plaintiff in favour of Kesavan
Ex.A8	26.12.2008	Release deed executed by 4th plaintiff in favour of Kesavan
Ex.A9	15.02.2020	Copy of FIR crime No.26/2020 Thanjavur Transport wing police station
Ex.A10	24.02.2020	Death certificate of Kesavan
Ex.A11	--	Copy of plaint in OS.166/2021
Ex.A12	--	Copy of summon to Umarani
Ex.A13	--	Copy of written statement in OS.166/2021
Ex.A14	--	Copy of guideline value
Ex.A15	07.05.2023	Encumbrance certificate

Defendants' side Witnesses: Nil Defendants' side Exhibits:

Ex.B.1	--	Copy of plaint in OS.121/2023
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**II Additional District and Sessions Judge,
Thanjavur.**

<p><u>Judgement in</u> <u>in OS.165/2024</u> <u>Dated:18.04.2026</u></p>
