



IN THE COURT OF THE FIRST ADDITIONAL DISTRICT JUDGE,
TIRUNELVELI.

Present: Thiru: D. SELVAM, M.L..
1st Additional District Judge,
Tirunelveli

Friday, the 5th day of June 2026

A.S. No: 82/ 2022
(CNR No. TNTL010065272022)

1. Mrs. Saral @ Thara
2. Mrs. Selvi @ Mariyaselvi

... Appellants/ Plaintiffs

// Versus //

1. Devaashirvatha Nadar (died)
2. Anbu Nadar
3. Raj
4. Balagan
5. Inbam
6. Rani
7. Kumar
8. Ilango

... Respondents/ Defendants

(6 to 8 Respondents who are the LR's. Of the 1st respondent
impleaded and Appeal memorandum amended as per
order in IA No.7/2025 dated 03.11.2025)

The Appeal was prepared against the decree and judgment in O.S. No. 83/2013, dated
19.01.2022, on the file of the Sub Court, Ambasamudram.

Between

1. Mrs. Saral @ Thara
2. Mrs. Selvi @ Mariyaselvi

... Plaintiffs

//And //



1. Devaashirvatha Nadar
2. Anbu Nadar
3. Raj
4. Balagan
5. Inbam

... Defendant

This appeal suit is coming before me on 08.04.2026 for a final hearing in the presence of Thiru: K. Sankararaman, Advocate for the Appellants, and Thiru: K. Selvaraj, Advocate for the Respondents 1, 3 to 8, 2nd Respondent called absent and set exparte and upon hearing the arguments of both sides and upon perusing Decree and Judgment of the trial Court and upon perusing the materials on record, and having stood over till this date for consideration, this court delivers the following...

JUDGMENT

1. Appeal Prayer: -

This appeal is filed by the appellants/Plaintiffs aggrieved against the Decree and Judgment passed by the Subordinate Judge, Ambasamudram, dismissing the suit O.S. No. 83/2013 dated 19.01.2022.

2. Prayer in O.S. No: 83/2013 in the trial court: -

The plaintiffs have filed the suit for partition of their 1/2 shares by the metes and bounds of the schedule property with costs.

3. The brief averments of the plaint in the trial Court: -



The schedule properties belonged to one Yesudasan Nadar, who died intestate, and left his legal heirs: his wife Chellammal, and sons of Jebamani Nadar, Anbu Nadar, DevaAsirvatha Nadar, and daughters of Mariammal, Annathai, Pushpam. The Chellammal also died intestate. The daughters had already orally relinquished their shares on payment of an amount on the date of their marriage. Then, the male legal heirs made the oral partition between them. The Jebamani Nadar died intestate and left the plaintiffs as his legal heirs. Even though made the oral partition, the parties jointly enjoyed the properties. The item no. 1 schedule property belongs to the plaintiffs' father. But the 1st defendant constructed the building on the western side through Government aid on the encroachment. Since the patta stands in the name of the 1st defendant. The 2nd item schedule property also belongs to the plaintiffs and defendant, and they enjoyed the property, and a joint patta stands in their name. Due to the construction of the building by the 1st defendant, the plaintiffs have no pathway to access the house. The above-said construction and closing the pathway is against the family partition. The 3rd item schedule property allotted to the plaintiffs' father, which is also used by the 1st defendant, and tried to create the encumbrance. So, the 1st defendant has not come forward to give their portion, and the same, the plaintiffs issued the legal notice to the 1st defendant on 22.10.2012, and the 1st defendant had replied on 06.11.2012 with false allegations. On pending of the suit, the 1st defendant



executed the settlement deed to the 3rd to 5th defendants, and the same, they were added as parties of the suit. So, the plaintiffs filed the suit for partition and to divide the properties to metes and bounds of ½ share of plaintiffs and separate possession with the costs.

4. The brief averments of the written statement filed by 1st defendant is as follows:-

The suit is not maintainable either in law or on the facts. This defendant denied the averments contained in the plaint, except for the admitted facts. In fact, after the demise of Yesudasan Nadar, an oral family partition was made on 09.06.1966. The female heirs got the amount of their shares, and relinquished their shares. After that, they have enjoyed the property as per the oral partition list. The plaintiff's father already executed a sale deed in favour of the 1st defendant on 10.05.1976, and the plaintiffs have no right over the 1st item property in respect of the portion of the sale deed described. Then, the 1st defendant executed the sale deed in favour of his sons on 28.11.2011 and 23.08.2012, and they constructed the house through Government Aid and enjoyed the property. The 2nd item property on the northern side was allotted to the plaintiffs' father; the 1st defendant got the southern side, where he executed the settlement deed in favour of his son, and he enjoyed the property. So, the 1st defendant has no right over the 2nd item schedule property. The eastern side 16.1/2



cents of the 3rd item schedule property was purchased by the 1st defendant from one Piramu Ammal and enjoyed the property. The western side 16.1/2 cents was purchased by the plaintiffs' father and the 1st defendant on 20.07.1966. So, the 3rd item, the 1st defendant is entitled to the right over the 24.3/4 cents. So, the plaintiffs claimed the right over the 3rd item of schedule property is not correct. As per the partition, there is no property available for partition in favour of the plaintiffs. So, the framing of the suit is not maintainable. The suit is hit by partial partition, since all the properties of Jebamani Nadar were not added in the suit. The suit is bad for non-joinder of necessary parties. Hence, the suit may be dismissed with costs.

5. The brief averments of the written statement filed by 2nd defendant is as follows:-

The suit is not maintainable either in law or on the facts. This defendant denied the averments contained in the plaint, except for the admitted facts. The suit is filed for partition between the plaintiffs and the 1st defendant. There is no prayer was made against the 2nd defendant. So, the 2nd defendant was not a necessary person for the suit. Hence, the suit may be dismissed against the 2nd defendant with costs..

6. The brief averments of the written statement filed by 3 to 5 defendants is as follows:-



The suit is not maintainable either in law or on the facts. This defendant denied the averments contained in the plaint, except for the admitted facts. In fact, after the demise of Yesudasan Nadar, one oral family partition was made between the male heirs on 09.06.1966. The female heirs got the amount of their shares, and relinquished their shares orally. After that, they have enjoyed the property as per the oral partition list. The plaintiff's father already executed a sale deed in favour of the 1st defendant on 10.05.1976, and the plaintiffs have no right over the 1st item property in respect of the portion of the sale deed described. Then, the 1st defendant executed the sale deed in favour of his sons on 28.11.2011 and 23.08.2012, and they constructed the house through Government Aid and enjoyed the property. The 2nd item property on the northern side was allotted to the plaintiffs' father; the 1st defendant got the southern side, where he executed the settlement deed in favour of his son, and he enjoyed the property. So, the 1st defendant has no right over the 2nd item schedule property. The eastern side 16.1/2 cents of the 3rd item schedule property was purchased by the 1st defendant from one Piramu Ammal and enjoyed the property. The western side 16.1/2 cents was purchased by the plaintiffs' father and the 1st defendant on 20.07.1966. So, the 3rd item, the 1st defendant is entitled to the right over the 24.3/4 cents. So, the plaintiffs claimed the right over the 3rd item of schedule property is not correct. As per the partition, there is no property available



for partition in favour of the plaintiffs. So, the framing of the suit is not maintainable. The suit is hit by partial partition, since all the properties of Jebamani Nadar were not added in the suit. These defendants got the documents and constructed houses and enjoyed. The suit is bad for non-joinder of necessary parties. Hence, the suit may be dismissed with costs.

7. Based on the pleadings, the trial court has framed the following issues:

1.	Whether plaintiffs are entitled to get preliminary decree for ½ share from the suit property?
2.	Whether there was an oral partition among the co-owner of suit properties?
3.	Whether this suit is hit by doctrine of partial partition?
4.	Whether this suit is not maintainable for non-joinder of necessary parties?
5.	To what relief the plaintiff is entitled to?

8. During the trial, on the plaintiffs' side, the 2nd plaintiff, Mrs. Selvi @ Mariaselvi, was examined as PW-1 and Ex. A-1 to Ex. A-9 and Ex. C-1 were marked. On the side of the defendants, the 1st defendant was examined as D.W.1 and Ex. B-1 to Ex. B-12 were marked.

9. After considering both sides' oral and documentary evidence and hearing their arguments, the trial court dismissed the suit. Aggrieved by the decree and



judgment passed by the trial court, the plaintiffs have preferred this present appeal on the following grounds.

10. Grounds of appeal: -

(i) The Judgment and decree of the trial court are against the law, the weight of evidence, and all probabilities of the case.

(ii) The trial court ought to have accepted the oral and documentary evidence on the side of the appellants and ought to have decreed the suit.

(iii) The trial court has not analyzed the facts of the case in a proper perspective.

(iv) The trial court decided that the plaintiffs and 1st defendant are remaining in possession of the lands through Ex. B-1 to B-3, B-7, B-8 and Ex. B-7 to B-12; the fact of possession was proved. The fact was confirmed by PW-1's oral testimony is not correct.

(v) The trial court held that the plaintiff's father Jebamani Nadar sold the eastern 8 cents covered by 1st schedule property to the 1st defendant is not correct.

(vi) The trial court would not consider that the 16.1/2 cents on the eastern side of the 3rd item in the schedule property was purchased by the 1st defendant on 12.03.1993 and 16.1/2 of the western portion was purchased by the plaintiffs' father through the sale deed dated 20.07.1966.



(vii) As the above grounds, the appellants/Plaintiffs have filed the appeal to set aside the Decree and Judgment passed by the Subordinate Judge, Ambasamudram in O.S. No. 83/2013, dated 19.01.2022 and seeking the relief to decree the suit.

11. For the sake and convenience of the appeal, the rank of the parties in the trial court is taken in the appeal.

12. During the appeal, no oral and documentary evidence was adduced.

13. Based on the grounds of appeal and submission of both sides, this appellate court has framed the points for determination of the appeal as follows:

1.	Whether the suit for partition is maintainable?
2.	Whether the decree and judgment dated 19.01.2022, passed by the Subordinate Judge, Ambasamudram, in O.S. No. 83/2013, is liable to be set aside?
3.	To what other reliefs to the parties?

14. Answer to the Point no. 1: -

14.1. Heard both sides. This court carefully perused the grounds of appeal, the trial court decree and judgment, and the case records.

14.2. Re-appreciation of the facts:-

(i) This court considered the evidence of PW-1 and DW-1 and considered the documents in Ex. A-1 to A-9, Ex. C-1 and Ex. B-1 to Ex. B-12.



(ii) The 2nd plaintiff was examined as PW-1 and has filed a Proof affidavit on the line of her plaint. The death certificate of Jebamani is marked as Ex. A-1. Settlement deed dated 30.12.2010 executed by 2nd plaintiff in favour of 1st plaintiff is marked as Ex. A-2. Settlement deed dated 30.12.2010 executed by 1st plaintiff in favour of 2nd plaintiff is marked as Ex. A-3. Patta stands for the items no. 1, 2, 3 are marked as Ex. A-4 to Ex. A-6. Legal notice issued by the plaintiffs to the 1st defendant on 22.10.2012 is marked as Ex. A-7. Acknowledgement card is marked as Ex. A-8. Reply notice of the 1st defendant on 06.11.2012 is marked as Ex. A-9. Commissioner interim report and plan are marked as Ex. C-1.

(iii) The 1st defendant was examined as DW-1 and has filed a Proof affidavit on the line of his written statement. Mortgage deeds dated 21.04.1967 executed by Devaasirvatha Nadar in favour of Devasahaya Nadar is marked as Ex. B-1 and Ex. B-2. Mortgage discharge receipt dated 21.06.1971 is marked as Ex. B-3. Sale deed dated 10.05.1976 executed by Jebamani Nadar in favour of Devaasirvatha Nadar is marked as Ex. B-4. Sale deed in favour of Jebamani and Asirvatham is marked as Ex. B-5 and Ex. B-6. Patta stands in the name of Devaasirvatha Nadar is marked as Ex. B-7. Patta is marked as Ex. B-8. Sale deed dated 28.11.2011, 07.01.2010, 07.05.2009 executed by Devaasirvatham in favour of his sons Inbam, Balagan and Raju are



marked as Ex. B-9 to Ex. B-11. Settlement deed dated 23.08.2012 executed by Devaasirvatham in favour of Inbam is marked as Ex. B-12.

(iv) Based on the oral evidence and documents of both sides, the schedule item no. 1 and 2 originally belong to the Yesudasan Nadar. He died intestate and left behind his legal heirs of 3 sons and 3 daughters and wife. The wife also died intestate. After that, the male heirs made an oral partition, and the female legal heirs orally relinquished their shares after receiving the amount during their marriage time.

(v) In respect of item no. 1 property orally partitioned between the plaintiffs' father Jebamani Nadar and the 1st defendant. The item no. 1 total extent is 16 cents; out of it, the plaintiffs' father got the share of 8 cents. The plaintiff's father executed a sale deed in respect of item no. 1 in favour of the 1st defendant through the Ex. B-4 for the extent of 8 cents.

(vi) In respect of item no. 2 property, orally partitioned between the plaintiffs' father Jebamani Nadar and the 1st defendant. The northern portion was allotted to the plaintiffs' father, and the plaintiffs are enjoying till the date. The southern portion was allotted to the 1st defendant, and he executed the documents in favour of his sons through the Ex. B-9 to Ex. B-12, and they are enjoying it.

(vii) Item no. 3 property: The southern portion of the 3rd item schedule property was purchased by the 1st defendant through the Ex. B-6. The northern portion was



purchased by the plaintiffs' father Jebamani Nadar and the 1st defendant through the Ex.B-5. As the above facts were admitted by both parties. Out of the total extent, the plaintiffs' father got the share of 8¼ cents. The 1st defendant got the share of 24¾ cents. Based on the oral partition, the plaintiffs' father and the 1st defendant enjoyed.

(viii) The plaintiffs took the allegation that the 1st defendant tried to make alienation based on the patta stands in his name. But the possession and allotment of share is not disputed by the plaintiffs. The above facts were disclosed through the exchange of notices Ex. A-7 and Ex. A-9.

(ix) As above, the 1st defendant executed the document Ex. B-9 to Ex. B-12 in favour of his sons, and they constructed the house and enjoyed the property. In the above facts, this court considered the evidence of PW-1, as

“1வது இலக்க சொத்து தெருவுக்கு தென்புறமாக உள்ளது. 2வது இலக்க சொத்து ரயில்வே லயினுக்கு தென்புறமாக உள்ளது. என் தாத்தா பெயர் ஏசுதாசன். ஏசுதாசன் 3 ஆண் பிள்ளைகள், 3 பெண்மக்கள் என்றால் சரி தான். ஏசுதாசன் இறந்த பிறகு வாய்மூலமாக ஒவ்வொருவரும் ஒவ்வொரு இடத்தை அனுபவித்துக் கொள்ள வேண்டுமென்று சொல்லி பிரித்துக் கொண்டார்கள் என்றால் சரி தான். அந்த பிரிவினை நடைமுறைக்கு வந்ததில் அன்பு நாடாருக்கு தபசில் சொத்தில் உரிமை கிடையாது என்றால் சரி தான். என அப்பா பாகத்திற்கு கொடுக்கப்பட்ட சொத்தை நானும், என் சகோதரியும் பத்திரம் மூலமாக பிரிவினை செய்து கொண்டோம் என்றால் சரி தான். என் பாகத்திற்கு கிடைத்ததில் நான் வீடு கட்டியுள்ளேன். என் வீடு வடக்கு பார்த்த வீடு என்றால் சரி தான். என் வீட்டிற்கு வடபக்கம் ரயில்வே லயின் தெரு உள்ளது என்றால் சரி தான். என் வீட்டிற்கு தென்பக்கம் 1ம் பிரதிவாதி தேவ ஆசிர்வாதத்தின் மகன்கள் ராஜீ மற்றும் பாலகன் வீடு உள்ளது என்றால் சரி தான். என் சொத்து வடபக்கமாகவும், ஷை ராஜு, பாலகன் வீடு தென்பக்கமாகவும் உள்ளது



என்றால் சரி தான். பாலகன், ராஜு வீடு கட்டிய விபரம் எனக்கு தெரியாது. 1ம் பிரதிவாதி அவர் பாக சொத்தை ராஜு மற்றும் பாலகனுக்கு பாத்தியப்படுத்திக் கொடுத்து விட்டார் என்றால் சரி தான். என் வீட்டிற்கு தென்புறமாக உள்ள சொத்தை என் பெரியப்பா 1ம் பிரதிவாதி அவரது பிள்ளைகளுக்கு கொடுத்து விட்டதால் 1ம் பிரதிவாதிக்கு தென்பாகத்தில் எந்த சொத்தும் இல்லை என்றால் சரி தான். என் வீடு மற்றும் அதற்கு தென்புறமாக உள்ள ராஜு, பாலகன் வீடு உள்ள பகுதியை 2 வது இலக்கச் சொத்தாக காட்டியுள்ளேன் என்றால் சரி தான். ராஜு, பாலகன் வீட்டிற்கு இடையே வழிபாதை வேண்டுமென்று நான் கேட்டுள்ளேன் என்றால் சரிதான். அவர்கள் ராஜு வீட்டிற்கு மேல்பக்கமாக போகும்படி சொல்கிறார்கள் என்றால் சரி தான். அதனால் தான் 1ம் பிரதிவாதி குடும்பத்திற்கும் எங்களுக்கும் பேச்சுவார்த்தை இல்லை என்றால் சரி தான். பாகப்பிரிவினை மேல்பக்கம் வழிபாதை போடப்பட்டது என்றால் சரியல்ல. வழிபாதையை சரி பண்ண வேண்டும் என்பது தான் என் பிரதான நோக்கம் என்றால் சரி தான்.

In her evidence, she clearly stated that she needs the pathway to reach the main road and the 1st defendant tried to sell the 3rd item property to the 3rd party based on the patta. Since the 1st defendant has closed the pathway already laid on his property, and they advised to go to the main road in Odai pooramboke.

(x) In this regard, the oral partition is admitted by both parties, and the same, the plaintiffs also executed the documents Ex. A-2 and Ex. A-3 between them. As such, the 1st defendant also executed the Ex. B-9 to Ex. B-12 in favour of his sons. So, the oral partition is admitted. As per the oral partition, the respective parties took possession of their shares and alienated and enjoyed. Once the oral partition is admitted and they had possession based on the oral partition, the parties cannot



reopen the partition again between the parties. In this regard, the learned counsel for the defendants relied on the citation as

“A. Samiappan (died) and 2 others (Vs.) S.Kandasamy and others, SA. No. 163/2018 dated: 18.03.2024, Hon’ble Madras High Court”

So, this court considered that the suit for partition is not maintainable. This court felt that the plaintiffs ought to have filed the suit for a pathway as the right of easement and injunction against the threat of the 1st defendant in respect of trying to alienate the 3rd item property. But the suit for partition was filed with wrong advice.

14.3. Plea of partial partition:-

Further, there is no specific property described by the defendants which was left some properties for the suit for partition or missing in the oral partition. So, this court considered that the suit is not hit on the plea of partial partition.

14.4. Plea of the suit is bad for non-jointer of necessary parties:-

Further, the 1st defendant and his legal heirs were added as parties of the suit and appeal, who received the settlement deed and sale deed in respect of the properties and are enjoying it. So, the suit is not bad for the non-jointer as a necessary party. However, the suit for partition is not maintainable. Accordingly, point no. 1 is decided.

15. Answer to the point no.2:



(i) As per the discussion in point no.1, this court decided that the plaintiffs mistakenly filed the suit for partition, after admitting the possession based on the oral partition. As per the evidence of PW-1, the plaintiffs need a pathway and injunction against the 1st defendant, against the alienation of the 3rd item of property. So, the suit for partition is not maintainable.

(ii) As above, the point is considered by the trial court and the suit was dismissed. In this regard, this court would not like to go into any modification, setting aside or variation of the trial court judgment and decree. Accordingly, point no. 2 is answered.

16. Answer to the point no. 3: -

As discussed above, points no. 1 and 2, this appellate court would not like to give any further relief to the parties. Accordingly, point no. 3 is answered.

17. In the result,

1) This appeal is dismissed.

2) The judgment and decree in O.S. No. 83/2013, dated 19.01.2022, on the file of the Subordinate Judge, Ambasamuthiram is confirmed.

3) This court directs that both parties bear their own costs.



This Judgment was directly dictated to the steno-typist Gr.I and typed by her, corrected and pronounced in open court by me on this, the 5th day of June 2026.

1st Additional District Judge,
Tirunelveli.

Annexure: Nil

1st Additional District Judge,
Tirunelveli.

Copy to

The Subordinate Court,
Ambasamudram.

TNTL010065272022



AS No. 82/2022

I Additional District Court,
Tirunelveli
DRAFT / FAIR JUDGEMENT
AS.No. 82/2022
Dated: 05.06.2026