

**IN THE COURT OF THE PRINCIPAL SUBORDINATE JUDGE,
CHEYYAR, THIRUVANNAMALAI DISTRICT.**

Present : N.Suresh, M.L.,
Principal Subordinate Judge,
Cheyyar.

Thursday the 2nd day of April- 2026

A.S.No.31/2023

C.N.R.No.TNTM04-000110-2023

ChinnasamyAppellant

//Vs //

Jayakumar Respondent

On Appeal Against the Decree and Judgment Dated 30.11.2022 passed in O.S.No.137 of 2021 by the Principal District Munsif Court, Cheyyar.

Between, O.S.No.137 of 2021

ChinnasamyPlaintiff

//Vs //

Jayakumar Defendant.

This appeal is coming on 03.03.2026 for final hearing before me in the presence of **Thiru.G.Dineshkumar** Advocate for the appellant and **Thiru.P.Vinayagam** Advocate for the respondent and heard the arguments and available records are perused and having stood over for consideration till this day, this court delivered the following :-

JUDGMENT

This appeal arises out of the Judgment and decree in O.S.No.137 of 2021 passed by the learned Principal District Munsif Court, Cheyyar, Dated: 30.11.2022.

The appellants filed a suit seeking a partition before the Trial Court. After a full trial, the Trial Court dismissed the suit, holding that the plaintiff had failed to prove his title and possession of the suit property. Aggrieved by the said judgment and decree, the plaintiff has preferred this appeal.

2. PLEADINGS BEFORE THE TRIAL COURT :-

GIST OF THE PLAINT IN O.S.No. 137 of 2021

i). The suit properties are joint family properties originally acquired by Somasundaram, the father of the Plaintiff and the Defendant. As it became inconvenient to continue joint enjoyment, a partition was effected on 12.06.1995 among Somasundaram, the Plaintiff, and his brothers. Pursuant to the said partition, each party entered into possession and enjoyment of their respective shares.

ii). Somasundaram had sons, namely the Plaintiff, Jayakumar, and Kotieswaran. Kotieswaran remained unmarried and resided jointly with the Plaintiff and the Defendant. During his lifetime, Somasundaram managed the share allotted to Kotieswaran. After the death of Somasundaram on 11.09.2003, the properties that fell to his share devolved upon the Plaintiff and the Defendant and continued to be jointly enjoyed by them.

iii). Kotieswaran, who was under the care and custody of the Plaintiff and the Defendant, was maintained by them using the income derived from his share of the properties. The Plaintiff and the Defendant were thus in joint enjoyment of the properties belonging to both Somasundaram and Kotieswaran. Upon the death of Kotieswaran on 22.05.2021, the said properties continued to remain in their joint possession.

iv). The suit properties consist of the properties that devolved upon Somasundaram (A-Schedule) and Kotieswaran (B-Schedule), which remain undivided and jointly enjoyed by the Plaintiff and the Defendant. Each of them is entitled to an equal one-half share in the said properties.

v). When the Plaintiff requested the Defendant on 11.07.2021 to effect partition and allot his lawful share, the Defendant refused and claimed exclusive ownership over the entire suit properties. Despite repeated demands, the Defendant failed to comply and continued to assert absolute rights. Hence, the Plaintiff has filed the present suit seeking partition and separate possession of his one-half share in the suit properties.

Along with the plaint, the plaintiff has filed the following documents :-

The plaintiff have submitted **Ex-P1** to support their case, Partition deed dated 12.06.1995 **Ex-P1**, these exhibits are relied upon to substantiate the plaintiffs' claims.

3. SUMMARY OF THE WRITTEN STATEMENT FILED BY THE 1st DEFENDANT :-

i). The Defendant emphatically denies all the allegations made by the Plaintiff in the suit. The Plaintiff is put to strict proof of each and every allegation. The suit properties are, in fact, properties acquired by the Plaintiff and the Defendant's father, Somasundaram. Only the house forms part of the ancestral joint family property. It is submitted that Somasundaram convened a family arrangement and effected a partition on 12.06.1995 among the Plaintiff, the Defendant, and the deceased Kotieswaran, so that all of them could enjoy the properties without dispute.

ii). It is incorrect to state that the Plaintiff, Jayakumar, and Kotieswaran are the only legal heirs of Somasundaram. In fact, Somasundaram had five legal heirs, namely Jayakumar, Kala, Chinnaswamy, Shanthi, and Kotieswaran. The Plaintiff has deliberately suppressed the existence of the female heirs, namely Kala and Shanthi, and has failed to implead them as necessary parties to the present suit. It is also false to state that Somasundaram maintained Kotieswaran until his death. On the contrary, the Defendant alone maintained Kotieswaran and managed his properties during his lifetime.

iii). After the partition dated 12.06.1995, the Plaintiff and the Defendant never enjoyed the suit properties jointly. After his marriage, the Plaintiff started living separately with his family at Kanchipuram for about 15 years and never participated in the enjoyment of the suit properties. The suit property continues to be under mortgage. The deceased Kotieswaran was in possession and cultivation of the property.

iv). The allegation that the Plaintiff and the Defendant jointly maintained Kotieswaran is wholly false. When Kotieswaran was in poor health, it was the Defendant who took care of him, provided food, arranged medical treatment, and attended to all his needs. The Plaintiff did not render any assistance whatsoever. The further claim that both the Plaintiff and the Defendant jointly performed the funeral rites is also false. The Defendant alone conducted the funeral rites at his own expense, and the Plaintiff did not contribute any amount, despite having promised to reimburse the expenses. Further, the Plaintiff has not discharged the mortgage liability over the suit property.

v). The Plaintiff has never approached the Defendant seeking partition of the suit property, nor has he called upon the Defendant to execute a partition deed. The allegation that the Defendant is asserting exclusive ownership has been falsely made for the purpose of this suit. The suit is based on false and misleading averments and is not maintainable, particularly for non-joinder of necessary parties, namely the female legal heirs Kala and Shanthi. Hence, the Defendant prays that this Honorable Court may be pleased to dismiss the suit with costs.

4. UPON CONSIDERING THE PLAINT AND WRITTEN STATEMENT, THE TRIAL COURT FRAMED THE FOLLOWING ISSUES :-

1. Whether the Plaintiff schedule properties are part of undivided family properties?
2. Whether partition had been effected between the parties and other sharers 12.06.1995 and has been acted upon?
3. Whether this suit for partition is bad for non-joinder of necessary parties, viz., Kala and Santhi?
4. Whether the Plaintiffs is entitled to 1/2 share in the suit property?
5. Whether the Plaintiff has been excluded from the possession of suit property?
6. If, so, whether the plaintiff be directed to value to suit u/s.37(1) Tamil Nadu Court Fee and Suit Valuation Act?
7. What other relief the plaintiff is entitled to ?

5. Whether the plaintiff is entitled to a partition restraining the defendants from alienating or otherwise disposing of the suit property, as prayed for in the plaintiff?

6. TRIAL AND FINDINGS OF THE TRIAL COURT :-

The plaintiff's case was dismissed on the grounds that the property details in the suit did not contain clear measurements and that the facts of the case were not duly proved.

7. THE GROUNDS OF APPEAL :-

i). The judgment and decree of the Trial Court are contrary to law, the weight of evidence, and the overall probabilities of the case. The Trial Court failed to properly appreciate the oral and documentary evidence adduced on behalf of the Plaintiff and has thereby arrived at an erroneous and unsustainable conclusion.

ii). The Trial Court erred in not properly considering the evidence of the Plaintiff's witnesses (P.W.1 and P.W.2) and in placing undue reliance on the unsubstantiated pleadings of the Defendant. The Defendant failed to produce any documentary evidence, and even the Mortgage Deed sought to be relied upon by him was rejected by the Court. Despite this, the Trial Court wrongly accepted the Defendant's claim of possession, which vitiates the findings.

iii). The Trial Court failed to appreciate that the Plaintiff had clearly established joint possession and enjoyment of the suit properties along with the Defendant. Evidence was adduced to show that the properties were cultivated and enjoyed by both parties. The finding that the Plaintiff was not in possession is perverse and unsupported by evidence. The house property, though kept under lock due to disputes, continued to remain under joint possession.

iv). The Trial Court further erred in holding that the suit was bad for non-inclusion of the entire properties of the deceased Kotieswaran. The Plaintiff had specifically pleaded that certain properties were already alienated by Kotieswaran during his lifetime and that the present suit is confined only to the remaining properties. This aspect, including the Defendant's admission regarding such alienation, was not properly considered.

v). The Trial Court failed to take into account the consistent case of the Plaintiff that both parties were in joint enjoyment of the properties even during the lifetime of Kotieswaran and thereafter. The Court also failed to consider the subsequent understanding between the parties regarding division of the properties and the steps taken by the Plaintiff to implead the necessary parties, including the sisters of Kotieswaran.

vi). The findings of the Trial Court suffer from non-application of mind, improper appreciation of evidence, and reliance on unproved assertions of the Defendant while disregarding the Plaintiff's documentary evidence, including title documents and the death certificate. Hence, the judgment is liable to be set aside, and the Plaintiff/Appellant is entitled to a preliminary decree for partition and separate possession of his one-half share in the suit properties.

8. POINTS FOR CONSIDERATION :-

1. Whether the suit is liable to be dismissed for non-joinder of necessary parties?
2. Whether the Plaintiff/Appellant is entitled to one-half share in the suit properties in view of the admitted facts?

3. Whether the decree and judgment of the Trial Court in O.S.No.137 of 2021, dated 30.11.2022, are liable to be set aside in this appeal?

9. ANSWER TO POINTS 1

ARGUMENTS ON BEHALF OF THE APPELLANTS :-

i). The judgment and decree of the Trial Court are contrary to law, the weight of evidence, and the overall probabilities of the case. The Trial Court failed to properly appreciate the oral and documentary evidence adduced on behalf of the Plaintiff and has thereby arrived at an erroneous and unsustainable conclusion.

ii). The Trial Court erred in not properly considering the evidence of the Plaintiff's witnesses (P.W.1 and P.W.2) and in placing undue reliance on the unsubstantiated pleadings of the Defendant. The Defendant failed to produce any documentary evidence, and even the Mortgage Deed sought to be relied upon by him was rejected by the Court. Despite this, the Trial Court wrongly accepted the Defendant's claim of possession, which vitiates the findings.

iii). The Trial Court failed to appreciate that the Plaintiff had clearly established joint possession and enjoyment of the suit properties along with the Defendant. Evidence was adduced to show that the properties were cultivated and enjoyed by both parties. The finding that the Plaintiff was not in possession is perverse and unsupported by evidence. The house property, though kept under lock due to disputes, continued to remain under joint possession.

iv). The Trial Court further erred in holding that the suit was bad for non-inclusion of the entire properties of the deceased Kotieswaran. The Plaintiff had specifically pleaded that certain properties were already alienated by Kotieswaran during his lifetime and that the present suit is confined only to the remaining properties. This aspect, including the Defendant's admission regarding such alienation, was not properly considered.

v). The Trial Court failed to take into account the consistent case of the Plaintiff that both parties were in joint enjoyment of the properties even during the lifetime of Kotieswaran and thereafter. The Court also failed to consider the subsequent understanding between the parties regarding division of the properties and the steps taken by the Plaintiff to implead the necessary parties, including the sisters of Kotieswaran.

vi). The findings of the Trial Court suffer from non-application of mind, improper appreciation of evidence, and reliance on unproved assertions of the Defendant while disregarding the Plaintiff's documentary evidence, including title documents and the death certificate. Hence, the judgment is liable to be set aside, and the Plaintiff/Appellant is entitled to a preliminary decree for partition and separate possession of his one-half share in the suit properties.

10. ARGUMENTS ON BEHALF OF THE RESPONDENT/DEFENDANT :-

i). The judgment and decree passed by the learned Trial Court are well-reasoned, based on proper appreciation of both oral and documentary evidence, and do not call for any interference by this Honorable Appellate Court. The Plaintiff/Appellant has failed to establish any perversity, illegality,

or material irregularity in the findings of the Trial Court. Hence, the appeal is liable to be dismissed in limine.

ii). The Respondent submits that the suit itself is not maintainable for non-joinder of necessary parties. The Plaintiff has deliberately suppressed the existence of other legal heirs of Somasundaram, namely Kala and Shanthi, who are admittedly entitled to a share in the suit properties. In a suit for partition, all co-sharers necessary parties, and non-impleadment of such parties is fatal to the case. On this ground alone, the Trial Court rightly dismissed the suit.

iii). It is further submitted that the Plaintiff has failed to prove joint possession and enjoyment of the suit properties. After the partition dated 12.06.1995, the parties have been in separate possession and enjoyment of their respective shares. The Plaintiff, after his marriage, has been residing separately at Kanchipuram for several years and has not participated in the management or enjoyment of the suit properties. Hence, the claim of joint possession is false and unsustainable.

iv). The Respondent further submits that the Plaintiff has not approached the Court with clean hands and has made false and misleading averments. The allegation that the Plaintiff and the Defendant jointly maintained Kotieswaran is wholly untrue. In fact, the Respondent alone took care of Kotieswaran, provided for his medical and personal needs, and managed his properties. Even at the time of his death, the Plaintiff did not contribute towards his care or funeral expenses. Such conduct disentitles the Plaintiff from claiming any equitable relief.

v). The Respondent also submits that no cause of action has arisen for filing the suit. The Plaintiff has never made any genuine demand for partition prior to the filing of the suit. The alleged refusal on 11.07.2021 is a fabricated contention created solely for the purpose of instituting the suit. The Trial Court has rightly disbelieved the Plaintiff's version and dismissed the suit.

vi). It is further submitted that the Plaintiff has not discharged the burden of proving his entitlement to the relief sought. The properties are not jointly enjoyed as alleged, and the Plaintiff has failed to establish his right to claim partition in the manner pleaded. The findings of the Trial Court are based on evidence and settled principles of law and do not warrant interference.

vii). In view of the above facts and circumstances, it is submitted that the appeal is devoid of merits and liable to be dismissed. The Respondent therefore prays that this Honorable Appellate Court may be pleased to confirm the judgment and decree of the Trial Court and dismiss the appeal with costs.

11. MAIN POINTS :-

Admitted Facts by Both Sides,

i). Upon hearing the arguments advanced on both sides and on a careful perusal of the records and documents, it is found that certain facts stand admitted by both the Appellant and the Respondent. It is not in dispute that the suit properties originally constituted joint family properties belonging to the family of the parties. It is further admitted that a registered partition deed dated 12.06.1995, marked as Ex-A1, was executed between the

Appellant, the Respondent, their father Somasundaram, and the Appellant's brother Kotieswaran, whereby the said joint family properties were partitioned among them.

ii). It is also an admitted position that, under the said partition deed, the 'A' Schedule property was allotted to Somasundaram, the 'B' Schedule property was allotted to the Respondent, the 'C' Schedule property was allotted to the Appellant, and the 'D' Schedule property was allotted to Kotieswaran. Both parties have further admitted that, subsequent to the said partition, each of them has been in separate possession and enjoyment of their respective allotted shares.

iii). It is further admitted by both sides that Somasundaram and Kotieswaran have since passed away. Further, it is not in controversy that the said partition deed dated 12.06.1995 (Ex-A1) is a duly registered document and has been acted upon by the parties. The Respondent, in his evidence, has also clearly admitted the execution of the said partition deed and the allotment of the respective properties thereunder. These admitted facts form the foundational basis for adjudication of the present appeal.

The D.W.1 admitted in his deposition that.

"தாவா சொத்து என் அப்பா கிரயம் பெற்றதா அல்லது பூர்வீகமாக கிடைத்ததா என்றால் தாத்தா சொத்து குடும்ப சொத்துக்களை பொறுத்து சுமார் 10 வருடங்களுக்கு முன்பு பாகப்பிரிவினை ஏற்பட்டது. 1206.1995 தேதியிட்ட பாகப்பிரிவினை ஆவணத்தின் மூலம் என் அப்பா குடும்ப சொத்துக்களை பாகப்பிரிவினை செய்துவைத்தார் என்றால் சரிதான். மேற்படி பாகப்பிரிவினை ஆவணத்தில் ஏ செட்யூல் சொத்து அப்பாவிற்கும், பி

செட்யூல் சொத்து எனக்கும், சி செட்யூல் சொத்து வாதிக்கும், டி செட்யூல் சொத்து கோட்டீஸ்வரனுக்கும் கிடைத்தது. பாகப்பிரிவினைக்கு பிறகு எங்களுடைய சொத்துக்களை தனித்தனியாக அனுபவித்து வந்தோம் என்றால் சரிதான். வாதியும், கோட்டீஸ்வரனும் என்னுடைய தம்பிகள். கோட்டீஸ்வரன் சுமார் 1 1/2 வருடத்திற்கு முன்பே இறந்துவிட்டார்.

and

அப்பா இறந்த தேதி தெரியாது. அப்பாவின் இறப்புச் சான்றிதழ், வாரிசு சான்றிதழ் தாக்கல் செய்யவில்லை. அப்பா இறந்தபிறகு கோட்டீஸ்வரன் என்னோடுதான் இருந்தார். கோட்டீஸ்வரன் கொரோனாவால் பாதிக்கப்பட்டு இறந்தார்."

Whereas the P.W.1 stated in his deposition that,

" சோமசந்தரத்திற்கு நான் உட்பட 5 வாரிசுகள், ஆண் வாரிசுகள் 3. பெண் வாரிசுகள் 2 இந்த வழக்கில் மேற்படி பெண் வாரிசுகளை கட்சி சேர்த்தேனா என்றால் அப்பா இறந்தபிறகு 3 ஆண் வாரிசுகள் மட்டும் ஏற்கனவே பாகம் பிரித்துக்கொண்டோம். தற்போது கோட்டீஸ்வரன் இறந்துவிட்டதாலும் தாவா சொத்து பிரதிவாதி பெயரில் இருப்பதாலும் அவரை மட்டும் கட்சி சேர்த்து இந்த வழக்கை தாக்கல் செய்துள்ளேன்."

Therefore, in his testimony, the Appellant has admitted that Somasundaram had five heirs, of whom three are male heirs and two are female heirs. He has further admitted that the said two female heirs were not impleaded as parties to the present suit, as stated above,

i). Hence ,This Court has carefully considered the submissions made on either side and perused the entire materials available on record. It is a well-settled principle of law that in a suit for partition, all co-sharers and persons having a share in the suit properties are necessary and proper parties, and non-impleadment of such necessary parties is fatal to the maintainability of the suit. In the present case, it is admitted that one Kotieswaran, to whom the 'D' Schedule property was allotted under the registered partition deed dated 12.06.1995 (Ex-A1), died unmarried. However, no legal heir certificate has been produced before this Court to establish his successors, if any, or to show the devolution of his estate.

ii). It is further seen that Somasundaram, to whom the 'A' Schedule property was allotted under Ex-A1, has also died. Admittedly, his legal heirs, namely his wife and daughters Kala and Shanthi, have not been impleaded as parties to the present proceedings. No legal heir certificate pertaining to Somasundaram has been filed to establish the complete chain of succession. In this context, it is pertinent to note that under Section 8 of the Hindu Succession Act, 1956, the property of a male Hindu dying intestate devolves upon his Class I heirs, which include his widow and daughters. Therefore, Kala and Shanthi, being the daughters, and the wife of Somasundaram, are Class I legal heirs entitled to succeed to his share.

iii). Furthermore specifically in partition matters, various High Courts, relying upon the above Supreme Court principles, have consistently held that all co-parceners/co-sharers must be impleaded, and failure to do so renders the suit bad for non-joinder of necessary parties, as any decree passed would

be incomplete and not binding on the absent parties a Court cannot adjudicate effectively in the absence of necessary parties whose rights are directly affected. In a partition suit, omission to implead all co-sharers results in an incomplete and unenforceable decree. Since the shares allotted under Ex-A1 to Somasundaram ('A' Schedule) and Kotieswaran ('D' Schedule) have devolved upon their respective legal heirs, all such heirs ought to have been necessarily impleaded in order to work out the rights of parties conclusively.

iv). In the present case, non-impleadment of the legal heirs of Somasundaram, namely his wife, Kala, and Shanthi, and failure to establish the legal heirs of Kotieswaran by producing appropriate legal heirship documents, has resulted in a serious defect. Any adjudication in their absence would prejudice their rights and would not bind them. Hence, this Court is of the considered view that the suit is bad for non-joinder of necessary parties.

v). Accordingly, this point is answered to the effect that the present suit is vitiated for non-joinder of necessary parties. In the absence of all co-sharers being brought on record, no effective, complete, and binding decree for partition can be passed. Therefore, the claim of the parties cannot be conclusively adjudicated unless all necessary parties are impleaded in accordance with law.

14. ANSWER TO POINT 2 :-

i). This Court has heard the arguments advanced on both sides and carefully perused the entire oral and documentary evidence available on record. On the side of the Appellant, two witnesses were examined, and only

one document, namely the registered partition deed dated 12.06.1995 marked as Ex-A1, has been produced. Except the said document, no other documentary evidence has been filed to substantiate the claim of the Appellant. On the side of the Respondent, the Respondent himself was examined as a witness, and no documents have been marked on his behalf.

ii). It is further seen that, admittedly, the legal heir certificates of both Somasundaram and Kotieswaran have not been produced before this Court. Moreover, the legal heirs of Somasundaram, namely his wife and daughters Kala and Shanthi, have not been impleaded as parties to the present proceedings. As already discussed and decided under the earlier point, the non-impleadment of necessary parties, particularly the legal heirs who are entitled to a share in the suit properties, renders the suit defective for non-joinder of necessary parties.

iii). In a suit for partition, it is a fundamental requirement that all co-sharers must be impleaded so as to enable the Court to pass an effective, complete, and binding decree. In the absence of such necessary parties, any adjudication would be incomplete and would prejudice the rights of persons who are not before the Court. In the present case, the failure to implead the wife, Kala, and Shanthi, who are the Class I legal heirs of Somasundaram, coupled with the absence of proof regarding the legal heirs of Kotieswaran, strikes at the root of the maintainability of the suit.

iv). Therefore, in view of the above defects and in light of the findings already rendered under the earlier point, this Court holds that the Appellant is

not entitled to claim a half share in the suit properties as prayed for. Accordingly, this point is answered against the Appellant.

12. ANSWER TO POINT 3 :-

i). This Court has heard the submissions made on both sides and carefully perused the entire materials available on record, including the pleadings, oral evidence, documentary evidence, and the judgment and decree of the Trial Court in O.S.No.137 of 2021 dated 30.11.2022. Upon such consideration, this Court finds that the Trial Court has rightly appreciated the facts and the legal position and has come to a correct conclusion in dismissing the suit.

ii). It is evident from the records that the Plaintiff/Appellant has not produced sufficient documentary evidence, except the partition deed dated 12.06.1995 marked as Ex.A1, to substantiate his claim for partition and separate possession. Further, as already discussed under the earlier points, the suit suffers from a fundamental defect of non-joinder of necessary parties, inasmuch as the legal heirs of the deceased Somasundaram, namely his wife and daughters Kala and Shanthi, have not been impleaded, and no legal heir certificate has been produced in respect of either Somasundaram or Kotieswaran.

iii). In a suit for partition, it is mandatory that all co-sharers or their legal heirs be brought on record to enable the Court to pass an effective and binding decree. The failure to implead such necessary parties renders the suit not maintainable. The Trial Court has properly taken note of these material

defects and has rightly held that, in the absence of necessary parties, no effective decree for partition can be granted.

iv). This Court finds no illegality, irregularity, or perversity in the findings rendered by the Trial Court. On the contrary, the judgment of the Trial Court is well-reasoned and in accordance with the settled principles of law. Hence, there are no valid grounds to interfere with the judgment and decree passed by the Trial Court.

v). Accordingly, this point is answered against the Appellant, holding that the judgment and decree of the Trial Court in O.S.No.137 of 2021 dated 30.11.2022 do not warrant any interference and are hereby confirmed.

In the result,

The appeal is dismissed, and the judgment and decree passed by the Trial Court dated 30.11.2022 in O.S. No.137 of 2021 are hereby confirmed with costs.

The judgment was typed by me on my laptop, corrected, and then pronounced in open court on this the 2nd day of April -2026.

**Principal Subordinate Judge,
Cheyyar.**

