

**IN THE COURT OF III ADDITIONAL DISTRICT JUDGE,
TIRUCHIRAPPALLI**

Present : Thiru A.Karnan, B.Sc, B.L.,
III Additional District Judge ,
Tiruchirappalli.

Friday, the 28th day of February 2020

Original Suit No.116/2013

B.S.Narayanan

...Plaintiff

/Vs/

1. B.S.Anandan
2. B.S.Velayutham
3. B.S.Gurusamy
4. B.S.Arunagiri
5. B.A.Bala Vadivel Murugan
6. A.S.Barakath Fathima
7. A.K.Anwar Basha
8. S.Mumtaj Begam
9. M.Abdul Rehman
10. The Special Thasildar (Land Acquisition),
National Highways, NH Office, Kulathur

...Defendants.

This suit was coming up for final hearing on 24.02.2020 before me in the presence of Thiru.S.Kannan, Advocate for the plaintiff and Thiru.D.Mathew, Advocate for the 1st, 5th and 8th defendants and Thiru.K.Jayaraman, Advocate for 2nd and 3rd defendants and Thiru. P.Saravanan, Government Pleader for 10th defendant and 4, 6, 7, 9, 10th defendants were remained set exparte and upon perusing the evidences and hearing both side arguments and having stood over till this day for consideration, this court delivered the following...

JUDGMENT

The plaintiffs have filed a suit for partition and injunction against the defendants under Order 7 Rule 1 CPC.,

2) The brief averments of the plaintiff case is as follows:

(i) The plaintiff and the defendants 1 to 4 and one Subramanian are brothers. The 1st defendant who is a eldest male member of the family. The brother said

Subramanian was died as a bachelor. The plaintiff and the defendants 1 to 4 are Hindu undivided joint family members. Their family Kulachatra is being a trading family. Infact, the father of the plaintiff and the defendants 1to 4 namely Sundaravadivel Mudaliyar had no ancestral properties. He had started a beedi manufacturing business in the year of 1937 under the name and the style of “Vel Beedi”. The trade mark was registered. The business was well flourished. Later on, the trade mark was changed into “B.S.305 Jadi Beedi”. It was also registered. The said business is a joint family business. The 1st defendant was attained a major in the year of 1961. He was taken as a partner in a joint family business dated on 01.04.1961. The kartha of the business was Sundaravadivel Mudaliyar. The business was running in the name and style of “B.S.Sundaravadivel Mudaliyar & Sons”. The plaintiff was taken as a partner of the business in the year of 1962. After that the business was well developed and flourished. After that the family business run by the plaintiff and the 1st defendant. Subsequently, the defendants 2 to 4 were attained majority. Accordingly, the defendants 2 to 4 have been taken as a partners in the joint family business. The said joint family business was yielding enormous income. From the income of the joint family business, the suit properties have been purchased in the name of the plaintiffs father namely Sundaravadivel Mudaliyar and their mother Jayalakshmi Ammal and the plaintiff and the defendants 1 to 4 and the deceased brother namely Subramanian. All the properties were acquired in the name of joint family members. It has been treated and enjoyed as joint family members in common.

(ii) The ‘A’ Schedule suit properties were purchased in the name of Sundaravadivel Mudaliyar. The ‘B’ Schedule suit properties were purchased in the name of Jayalakshmi Ammal. The ‘C’ Schedule suit properties were purchased in the name of deceased Subramanian. The ‘D’ Schedule suit properties were purchased in the name of 1st defendant. The ‘E’ Schedule suit properties were purchased in the name of the plaintiffs. The ‘F’ Schedule suit properties were purchased in the name of the 2nd defendant. The ‘G’ Schedule suit properties were purchased in the name of the 3rd defendant. The ‘H’ Schedule suit properties were purchased in the name of 4th defendant. The ‘I’ Schedule suit properties have been

purchased jointly in the name of the plaintiff and the defendants 1 to 4. The plaintiff's father Sundaravadivel Mudaliyar was died in the year of 1969. The brother said Subramanian was died in the year of 1970. The plaintiff mother Jayalakshmi Ammal was died in the year 2008. The plaintiff parents and his brother Subramanian were died intestate. After that the plaintiff and the defendants 1 to 4 have been jointly running the family business without any division. In recognition of the nature and character of the joint family properties, the plaintiff and the defendants 1 to 4 had agreed to divide the properties amicably and in connection with a statement was made in writing dated on 23.09.2011. If the 1st defendant is being a eldest family member, the original joint statement was handed over to him. The rest of the plaintiff and the defendants 2 to 4 have received the xerox copy of the joint statement. Later on, the 1st defendant was settled the 'D' Schedule properties infavour of his son 5th defendant without the knowledge of plaintiff and the defendants 2 to 4 dated on 11.06.2012. The statement made by the 1st defendant that the properties settled in favour of his son which were purchased out of his own money is incorrect and unbelievable. When the time of purchasing the 'D' Schedule properties in the year of 1960 and 1961, the 1st defendant had just attained a majority and he was unemployed. The 1st defendant was no independent source of income. These properties were purchased only from the income of the joint family business. The alleged settlement deed executed by the 1st defendant infavour of the 5th defendant is invalid and not binding upon the plaintiff. The 1st defendant sold last item of the 'D' schedule properties by virtue of four sale deeds infavour of the defendants 6 to 9. The last item of the 'D' schedule property which does not exclusively belonging to the 1st defendant and it was purchased from the income of the joint family business. The sale deeds stands in the name of the defendants 6 to 9 are invalid and not binding upon the plaintiff. After knowing the act of the 1st defendant, the plaintiff was made a objection in this regard. Being aggrieved, the 1st defendant through his son as a power agent has filed a suit for rendition of accounts, in respect of the joint family partnership business against the plaintiff and others in OS.No.1603/2012 before the III Additional District Court, Trichy . The said suit is also pending. Under law, one partner cannot

delegate his rights infavour of third party regarding the partnership rights by way of executing a power of attorney. The alleged power of attorney was executed by the 1st defendant infavour of the 5th defendant is invalid. The plaintiff has also filed a suit in OS.No.1672/2012 before the II Additional District Munsif Court, Tiruchirappalli against the 1st and 5th defendants. A portion of the lands in the 'D' schedule properties are sought to the acquired by the National High ways Authority . The 1st defendant is taking advantage of the fact that the sale deed for the lands standing in his name, he is making arrangements to receive the compensation amount. The 10th defendant who is a dispersing authority of the compensation amount. Hence, the plaintiff was issued a legal notice to the 10th defendant not to dispersing the compensation amount to the 1st defendant or the defendants 2 to 4. Hence, the plaintiff is entitled to get 1/5 share in the suit properties and granting a injunction restraining the 10th defendants from the dispersing the compensation amount to the defendants 1 to 4 excluding the plaintiff in respect of the suit lands situated at Mathur Village.

3) The brief averments of the written statement filed by the 1st defendant and the same is adopted by the 5th defendant is as follows:

The plaintiff is guilty of "Suppressio Vari and Suggestio Falsi" and with ulterior motive, he has filed the present suit and not entitled to get any relief as prayed in the plaint. During the life time of the plaintiff's father namely Sundaravadivel Mudaliyar, he had acquired the following five categories of properties out of his hard work. They are (i) property on his own name (ii) Properties in common name (iii) Properties in a firm name (iv) Properties in a individual name (v) Property in the name of Jayalakshmi ammal (mother of the plaintiff and defendants 1 to 4). The plaintiff's father was died in the year of 1969. After that all the above said properties had been enjoyed by the plaintiff and the defendants 1 to 4 till the year of 1982. The plaintiff, the defendants 1 to 4 and their mother had entered into a oral partition in respect of all the properties in the year of 1982. In the oral partition, the following terms have mutually agreed and decided by the plaintiff and the defendants 1 to 4 and their mother. Those are (i) The properties stands in the name of son's of the B.S.Sundaravadivel Mudaliyar are to

be treated as an individual properties and the sons are the absolute owners of their respective portion. (ii) All the common properties will be divided equally after the life time of the mother of the plaintiff and defendants 1 to 4. (iii) Regarding the firm is concerned, all the legal heirs are continuing the same business without any partition. The said partition is effected and acted upon as early as in the year of 1982 itself. The plaintiff and the defendants 1 to 4 have been enjoying their respective portions as agreed by them from the day of the partition. Since, the oral partition is effected and acted upon in accordance with the terms, mere filing of the suit in respect of the same properties is not maintainable. Hence, there is no cause of action will arise in respect of the same issue (Properties). The 3rd defendant had entered into a registered sale vide No. 1125/1983 in respect of his own portion dated on 18.05.1983. The plaintiff son namely Saravanan and the 1st defendant had entered into a registered lease agreement by incorporating the terms in respect of the property allotted in favour of the 1st defendant dated on 14.03.1995. The plaintiff was mortgaged the property which was allotted to him in the oral partition in favour of the City Union Bank to the tune of Rs.68,00,000/- and the same was redeemed. The 1st defendant had executed a gift settlement deed in favour of the 5th defendant dated on 11.06.2012. The plaintiff had filed a complaint before the Judicial Magistrate Court No.V, Trichy against the 2nd and 3rd defendants for recovery of cheque amount. The said complaint has taken on file in STC.No.1174/2013. Since, the plaintiff and the defendants had mutually agreed the above said partition, the plaintiff had not incorporated the properties which are stands in the name of the firm. (if the partition is not acted upon what kind of stork prevented that plaintiff to incorporate the firms properties in the suit). During the pendency of the suit, the 2nd defendant was received a compensation amount of Rs.20,00,000/- from the 10th defendant. Hence, the partition is effected. The said evidences are proved that the oral partition is duly effected and acted upon in accordance with the terms as agreed by the plaintiff and the defendants 1 to 4 since 18.05.1983. If the plaintiff is really wanted to get a legal remedy in accordance with law or he finds any imbalance in respect of the above said oral partition, he ought have filed a suit for partition and set aside the sale within the period of three years and the same was

lapsed in the year of 1985 itself. Hence, the suit is barred by Limitation Act. The plaintiff who is one of the partner in the partnership business. He was swindled a sum of Rs.2,96,00,000/- through bank right from 05.01.2012 to 25.10.2012 from the partnership business. The stealing and misappropriation was founded by the 5th defendant. After that the 5th defendant has filed a suit for rendition of accounts against the plaintiff and the defendants 2 to 4. To escape from the clutches of law, the plaintiff has simply filed the suit for partition. The mother of the plaintiff and the defendants 1 to 4 was died in the year of 2007. There was murmuring with regarding sharing of undivided common properties. Hence, the plaintiff and the defendants 2 to 4 had entered into a partition in respect of undivided common properties and they have drafted a rough copy of partition deed. The firm had put into financial crises in the month of June 2011. Hence, the plaintiff and the defendants 1 to 4 have mutually agreed to sale some of the property which stands in the name of the firm to meet out the financial crises. Hence, a paper advertisement was given by the plaintiff son dated on 23.09.2011. The sale price was fixed for a sum of Rs.54,00,000/-. One Mallika was offered the highest price to that effect. She was deposited the sale consideration amount of Rs.54,00,000/- into the firm account. If the plaintiff was being a administrator of the firm at the time of the selling the property, he was malafidely transfer the above said sale consideration amount into his personal account. The plaintiff has not paid any single paise to the 1st defendant. He has committed the offence of criminal misappropriation and breach of trust. Hence, the plaintiff has filed the suit for partition intentionally. As early as 1937, the plaintiff father was started a Beedi manufacturing business under the name and style of "VEL BEEDI" and later on changed into as "B.S.305 JADI BEEDI". After that the 1st defendant became major, he was taken as a partner by his father and the business was converted into a partnership firm under the name and style of "B.S.SUNDARA VADIVEL MUDALIYAR & SONS" Therefore, the business is not either a joint family business or joint family partnership business as mentioned in the plaint. The plaintiff is well aware about the fact of the partition and allotment of shares to the 2nd defendant. The National Highways Authority was issued a notice to the 2nd defendant. But, the plaintiff has deliberately omitted to the

2nd defendant's properties in the suit. The other defendants 2 to 4 are colluded with the plaintiff. The rest of the defendants had received a compensation from the 10th defendant. The plaintiff has not raised any objection to receive the compensation. The 1st defendant is aged about 75 years old. He is a well practicing doctor and rendering service to the poor people. Out of his profession, he has earned a good name and fame in his circle. He has invested his earnings from the Medical Profession into the business as well as in joint family. His investments in the business have swindled by the plaintiff and his sons for the past several years. At any point of time, the 1st defendant never executed any document in respect of the partition as mentioned in the plaint. The National Highways Authority had acquired the 1st defendant land for forming the road. The 1st defendant land is catching the road face. It is get higher value than other properties of the plaintiff and other defendants 2 to 4. Hence, the plaintiff has filed the suit with malafide intention. The other defendants have also dancing to the tune of the plaintiff. There is no cause of action in the suit. The suit properties have not properly valued. The court fee is not paid correctly.

4) The brief averments of the written statement filed by the 2nd defendant and the same is adopted by the 3rd defendant is as follows:

The relationship of the parties are admitted. The family Kulachatra is being a trade is also admitted. The acquisition of properties through business is also admitted. The averments made in para 9 of the plaint is admitted that the suit schedule properties of A, B, C, D, E, F, G, H, I which have been purchased in the name of the parents of the plaintiff and his deceased brother Subramanian and the defendants 1 to 4. The plaintiff is guilty of suppression of facts. He has not come to the court with clean hands. He has purposely omitted some other properties which are also available for partition. Those properties are also have to be included in the partition. (1) an extent of 3150 sq.ft. at Keelapudur Village in Puthur Village in Old Ward 8, Block 24 T.S.No. 2303, (2) an extent of 1575 sq.ft. at Keelapudur Veedhi in the Northern row in Puthur in Old Ward 8, T.S.No.2303, (3) an extent of 6300 sq.ft. in Sengulam Village in Old Ward 24, Old T.S.No.2302, (4) an extent of 333 sq.ft. at Mettu Street, Eda Street Road in Varaganeri Village in

New ward 'H' Block 13 T.S.No.74, (5) an extent of 2400 sq.ft Plot No.27 south of Third Street, Brindavanam, Saram Village in Pondicherry, (6) The house property having Door No.42, Eda Street Road, an extent of 1715 sq.ft., building with structure (7) The house property having Door No.44 Eda Street Road an extent of 582 sq.ft. the building with structure, (8) The property having Door No.68 in Anandapuram New Street an extent of $20 \times 63 = 1260$ sq.ft. The above said items have to be included in the plaint. Hence, without including the above said properties, the suit is bad for partial partition. The properties which stands in the name of the plaintiff and the defendants 1 to 4 are not exclusive properties of them and it is a joint family properties. Eventhough, the 'D' schedule item of the property stands in the name of the 5th defendant which is not a self acquired property of himself. The 5th defendant was only a minor. He was no independent income to purchase the suit properties. He was unemployed. The settlement deed was executed by the 1st defendant infavour of the 5th defendant is not a valid one and not binding upon the parties. The 1st defendant has no right to alienated the properties. The alleged four sale deeds executed infavour of the defendants 6 to 9 are not binding upon the defendants. They were not parties in the sale deeds. The 5th defendant has filed a suit in OS.No.1613/2005 before the III Additional District Munsif Court, Tiruchirappalli as a power agent of the 1st defendant against the plaintiff for rendition of accounts with regarding joint family partnership business. The alleged power of attorney is a invalid one. A party cannot delegate his right infavour of the third parties as a agent of the firm. The 'B' schedule property which situated at Keela Kosa Street measuring an extent of 1808 Sq.ft. of its vacant land already had been sold and the sale proceeds were shared among the sharers. The 16th item of the 'D' schedule property had been already sold and the sale proceeds were shared among the sharers. One more item in the 'I' schedule property measuring on extent of 3500 sq.ft of vacant land situated at 2nd Street, Brindavanam, Pondichery had been already sold and the sale proceeds were transferred into M/s.B.S.Sundaravadivel sons account and it has to be shared. The defendants 2 and 3 are entitled to get partition in the suit properties. But, directed to the plaintiff to including the properties as stated earlier for partition.

5) The 4th, 7th, 9th defendants were remained set exparte on 20.09.2013.

6) The brief averments of the reply statement filed by the plaintiff is as follows:

There was no oral partition among the parties either in 1982 or at any other time. There was no necessity for parties to enter into any division by partition and that too orally. It is not true that the oral partition was acted upon 1982 itself and plaintiff and the defendants 1 to 4 have been enjoying the share respective portions separately. On the other hand, infact that the respective family of the plaintiff and the defendants 1 to 4 enlarged and grown and for the shake of convenience, the parties have been living separately without any division by metes and bounds. There was no intention on the part of the plaintiff or other sharers to view of the common undivided rights in the properties. Now, the plaintiff and the defendants 1 to 4 are co-owners and co-sharers and the members of Hindu undivided family. The partition pleaded in the written statement of the 1st defendant is only a myth. The plaintiff is not known to the sale deed executed by the 3rd defendant dated on 18.05.1983 will not raise a presumption of oral partition. The plaintiff son namely Saravanan was executed a lease deed infavour of the 1st defendant in respect of the suit properties will not raise a presumption of oral partition. Saravanan wanted to start a dairy firm for the purpose of getting loan. The bank was insisted a registered document. In view of the getting loan from the bank, a registered lease deed was executed by the 1st defendant. It cannot be construed that there was an oral partition. The allegation in paragraph 5(c) of the written statement of the 1st defendant that since the plaintiff had executed a mortgage in respect of the property standing in his name and discharged the same, it should be presumed that there was an oral partition in 1982 is untenable. Under Law, the mere fact that one co-owner has raised a loan on the property standing in his name and enjoyed by him for convenience, will not lead to the conclusion that there should have been a partition. As stated earlier, there was no partition at any point of time and parties have not released or relinquished their rights in the properties. The mode of division as

mentioned in the written statement of first defendant besides being untrue is also unnatural. Taking advantage of the fact that bulk of properties in 'D' schedule are standing in his name though admittedly purchased from joint family income and are joint family properties, the first defendant wants to knock off those properties by contending that there was an oral partition and that the properties standing in his name were agreed to be held by him as owner. As stated in the plaint, all the suit properties are joint family properties which remain undivided. Partition can be asked for only in respect of the joint family properties which the plaintiff has done. The joint family firm is not a sharer and the properties standing in the name of the firm are not joint family properties. The firm still remains. Hence, under Law the plaintiff can not either include the firm or its properties in the suit for partition. The joint family firm is incapable of any division. The plaintiff is not aware of the fact that the 2nd defendant has received compensation amount is said to have been received after the suit, the remedy will be worked out later. The allegation in paragraph 6 of the written statement of the 1st defendant that oral partition is effected and acted upon in accordance with the terms as agreed by plaintiff and defendants 1 to 4 is untenable in view of the fact that there was no partition of any kind at any point of time. The allegation in paragraph 6 of the written statement of the 1st defendant that the plaintiff ought to have filed a suit for partition after setting aside the sales and in view of the fact that the time to set aside the sales elapsed in 1986, the suit for partition is not maintainable is a wrong statement of law. The first defendant himself admits that Kulachara of the family is business and it was started by the father. As and when sons became major, they are also taken as partners. It is significant to note that none other than the members of the joint family are partners of the firm. The first defendant does not know the difference between a joint family firm and a partnership firm. Even other wise, if the property of the 2nd defendant is not included in the suit, the remedy is otherwise. The first defendant has not pleaded that the suit is bad for partial partition. The plaintiff and defendants 2 to 4 are pressing for their claim in the suit properties by demanding partition. There is no malafide intention. On the other hand, it is only the first defendant, as stated earlier, wants to knock away all the properties.

7) The 6th defendant was remained set exparte on 17.12.2019.

8) The brief averments of the written statement is filed by the 8th defendant is thus as follows:

The 8th defendant was purchased the last item of the 'D' schedule property from the 1st defendant by virtue of a registered sale deed dated on 09.01.2012. She has been possession and enjoyment of the purchased property since 09.01.2012. She is a bonafied purchaser. The 1st defendant was executed two sale deeds infavour of the 6th and 7th defendants. In the said sale deeds, the 2nd defendant was signed as a witness. It is confirmed the ownership and title of the 1st defendant. Now, the 2nd defendant has deliberately suppressed the fact of the oral partition and conclusively deposed infavour of the plaintiff for getting wrongful gain. If this Hon'ble court decreed the suit for partition, without prejudice the last item of the 'D' schedule property may be pleased to allot to the 1st defendant, so that the 8th defendant may compensate the same.

9) On the basis of the pleadings, this court has framed the following issues for trial:

1. Is the plaintiff entitled for a preliminary decree of 1/5 share in the suit property?
2. Is it true to state that already an oral partition took place in 1982 itself?
3. Is it true to state that as a result of such oral partition, the plaintiff and defendants 1 to 4 entered into various sales in respect of properties allotted to them?
4. Is it true to state that basing such oral partition D2 was allotted a compensation by D10 also?
5. Are the suit property still joint family properties or not?
6. Is the suit bad for non-joinder of necessary properties?
7. Any other relief?

10) Additional Issues

- 1) Whether the 8th defendant was purchased the 16th of the 'D' schedule property as a bonafide purchaser?

2) whether the plaintiff is entitled to get the relief of injunction against 10th defendant as prayed for?

3) Whether the suit is bad for partial partition?

4) Whether the suit is barred by Limitation Act?

11) On the plaintiff side , no witness was examined and Forty Nine exhibits were marked and the defendant side , two witnesses have been examined and Seventeen exhibits were marked. The 5th defendant was examined as DW1 and Ex.A1 to Ex.A43 and Ex.B1 to Ex.B13 were marked and the 2nd defendant was examined as DW2 and Ex.A44 to Ex.A49 and Ex.B14 to Ex.B17 were marked.

12) Issues No: 2,3 &5

i) In these issues, we let us to decide, whether the suit properties are still joint family properties or already an oral partition took place in 1982 and as a result of it, the plaintiff and the defendants 1 to 4 were entered into various sales in respect of properties allotted to them?

ii) In these issues, initially we let us to decide, the relationship of the party to the proceedings. One Sundaravadivel Mudaliyar and his wife Jayalakshmi Ammal had six children. They are the plaintiff and the defendants 1 to 4 and one Subramanian. The said Subramanian was died as a bachelor and died intestate. The 5th defendant who is a son of the 1st defendant. The defendants 6 to 9 are strangers to the family of the plaintiff and the defendants 1 to 4. They are purchaser of the last item of the 'D' Schedule property. The 10th defendant who is a Special Tahsildar, Land acquisition, National Highways, Kulathur. In this case, the defendants 2 to 4 are almost agreed with the plaintiff case. The dispute is only between the plaintiff and the 1st defendant and his son 5th defendant alone.

iii) In these issues, secondly, we let us to see the characteristics of the suit properties whether the suit properties are Hindu joint family properties or self acquired properties ?

iv) The plaintiff case is that the plaintiff and the defendants 1 to 4 father namely Sundaravadivel Mudaliyar had no ancestral properties. He had started a

beedi manufacturing business in the year of 1937 under the name and the style of “Vel Beedi”. The trade mark was registered. The business was well flourished. Later on, the trade mark was changed into “B.S.305 Jadi Beedi”. It was also registered. The said business is a joint family business. From the income of the joint family business, the suit properties have been purchased in the name of the plaintiffs father namely Sundaravadivel Mudaliyar and their mother Jayalakshmi Ammal and the plaintiff and the defendants 1 to 4 and the thier deceased brother namely Subramanian. The ‘A’ Schedule suit properties were purchased in the name of Sundaravadivel Mudaliyar. The ‘B’ Schedule suit properties were purchased in the name of Jayalakshmi Ammal. The ‘C’ Schedule suit properties were purchased in the name of deceased Subramaniyan. The ‘D’ Schedule suit properties were purchased in the name of 1st defendant. The ‘E’ Schedule suit properties were purchased in the name of the plaintiff. The ‘F’ Schedule suit properties were purchased in the name of the 2nd defendant. The ‘G’ Schedule suit properties were purchased in the name of the 3rd defendant. The ‘H’ Schedule suit properties were purchased in the name of 4th defendant. The ‘I’ Schedule suit properties have been purchased jointly in the name of the plaintiff and the defendants 1 to 4. Hence, all the above said suit properties have been purchased in the name of joint family members.

v) The contested 1st defendant and his son 5th defendant case is that during the life time of the plaintiff’s father namely Sundaravadivel Mudaliyar had acquired the following five categories of properties out of his hard work. They are (i) property on his own name (ii) Properties in common name (iii) Properties in a firm name (iv) Properties in a individual name (v) Property in the name of Jayalakshmi Ammal (mother of the plaintiff and defendants 1 to 4).

vi) The defendants 2 to 4 case is that they have admitted the case of the plaintiff .

vii) In this case, Nine items of the properties have been described as a suit properties. They are described as ‘A’, ‘B’, ‘C’, ‘D’, ‘E’, ‘F’, ‘G’, ‘H’ and ‘I’ respectively. In this case, both parties have admitted that their family had no ancestral properties and the plaintiff’s father had started the business of

manufacturing beedi in the name and style “Vel Beedi” in the year of 1937 and later on, it was changed into “B.S.305 Jadi Beedi” and he had purchased the suit properties from the income of the beedi manufacturing business. Even if the suit properties had been purchased in the name of the plaintiff and the defendants 1 to 4 and their parents and their deceased brother Subramanian, according to the admission of both parties, this court decides that the suit properties are treated as a Hindu joint family properties.

viii) In these issues thirdly, we let us to decide, whether already an oral partition took place in 1982 itself or the suit properties are still joint family properties?

ix) The plaintiff case is that his father namely Sundaravadivel Mudaliyar was died in the year of 1969. He and the defendants 1 to 4 and one Subramanian are children of the deceased Sundaravadivel Mudaliyar. The alleged one brother namely Subramanian was died as a bachelor in the year of 1970. The plaintiff's mother Jayalakshmi Ammal was died in the year 2008. The plaintiff parents and his brother Subramanian were died intestate. After that the plaintiff and the defendants 1 to 4 have been jointly running the family business without any division. In recognition of the nature and character of the joint family properties, the plaintiff and the defendants 1 to 4 had agreed to divide the properties amicably. In connection with, a statement was made in writing dated on 23.09.2011. If the 1st defendant is being a eldest family member, the original joint statement was handed over to him. The the xerox copy of the joint statement was received by the plaintiff and the defendants 2 to 4. Later on, the 1st defendant was settled the ‘D’ Schedule properties in favour of his son 5th defendant without the knowledge of plaintiff and the defendants 2 to 4 dated on 11.06.2012. The statement made by the 1st defendant that the properties settled in favour of his son which were purchased out of his own money is incorrect and unbelievable. Hence, the plaintiff is entitled to get 1/5 share in the suit properties. In this case, the defendants 2 to 4 have also admitted the case of the plaintiff as stated above.

x) The contested defendants 1 and 5 case is that the plaintiff's father was died in the year of 1969. After that all the above said properties had been enjoyed

by the plaintiff and the defendants 1 to 4 till the year of 1982. The plaintiff, the defendants 1 to 4 and their mother had entered into a oral partition in respect of all the properties in the year of 1982. In the oral partition, the following terms have mutually agreed and decided by the plaintiff, defendants 1 to 4 and their mother. Those are (i) The properties stands in the name of son's of the B.S.Sundaravadivel Mudaliyar are to be treated as an individual properties and the sons are the absolute owners of their respective portion. (ii) All the common properties will be divided equally after the life time of the mother of the plaintiff and defendants 1 to 4. (iii) Regarding the firm is concerned, all the legal heirs are continuing the same business without any partition. The said partition is effected and acted upon as early as in the year of 1982 itself. The plaintiff and the defendants 1 to 4 have been enjoying their respective portions as agreed by them from the day of the partition. Since, the oral partition is effected and acted upon in accordance with the terms, mere filing of the suit in respect of the same properties is not maintainable. Hence, there is no cause of action will arise in respect of the same issue (Properties). The 3rd defendant had entered into a registered sale vide No. 1125/1983 in respect of his own portion dated on 18.05.1983. The plaintiff son namely Saravanan and the 1st defendant had entered into a registered lease agreement by incorporating the terms in respect of the property allotted in favour of the 1st defendant dated on 14.03.1995. The plaintiff was mortgaged the property which was allotted to him in the oral partition in favour of the City Union Bank to the tune of Rs.68,00,000/- and the same was redeemed. The 1st defendant had executed a gift settlement deed in favour of the 5th defendant dated on 11.06.2012. The plaintiff had filed a complaint before the Judicial Magistrate Court No.V, Trichy against the 2nd and 3rd defendants for recovery of cheque amount. The said complaint is taken on file in STC.No.1174/2013. Since the plaintiff and the defendants had mutually agreed the above said partition, the plaintiff had not incorporated the properties which are stands in the name of the firm. (if the partition is not acted upon what kind of stork prevented that plaintiff to incorporate the firms properties in the suit). During the pendency of the suit, the 2nd defendant has received a compensation amount of Rs.20,00,000/- from the 10th defendant. Hence, the partition is effected. The

evidences are proved that the oral partition is duly effected and acted upon in accordance with the terms as agreed by the plaintiff and the defendants 1 to 4 since 18.05.1983.

xi) In this case, on considering both side contentions and the evidences, Ex.A1 to Ex.A31, Ex.A44, Ex.A45 , Ex.A46, Ex.A47 and Ex.A48 which are various sale deeds relating to the suit properties. It stands in the name of the plaintiff and the defendants 1to4 and their parents and their deceased brother subramanian. Ex.A32 which is a registered settlement deed executed by the 1st defendant infavour of his son 5th defendant with regarding D schedule suit properties except 16th item dated on 11.06.2012. Ex.A33, Ex.A34, Ex.A35 and Ex.A36 sale deeds have been executed by the 1st defendant infavour of 6th, 7th, 8th and 9th the defendants with regarding 16th item of the D schedule suit property dated on 21.12.2011 and 09.01.2012. Ex.A37 which is a legal notice issued by the plaintiff to the 10th defendant. Ex.A38 which is a reply notice issued by the 1st defendant. Ex.A39 which is a letter written by the 1st defendant . Ex.A40 which is a letter written by the 5th defendant . Ex.A41 which is a registered sale deed executed by the plaintiff and the defendants 1 to 4 infavour of one S.Gomathi with regarding Pondichery property dated on 26.12.2011. Ex.A42 which is a registered sale deed executed by the plaintiff and the defendants 1 to 4 infavour of one P.Sahul Hameed dated on 26.12.2011. Ex.B1 which is a registered lease deed executed by the 1st defendant infavour of the plaintiff son namely Saravanan with regarding 1A, 12,13,14th items of the D schedule suit properties and in S.F.No:44/2 of its extent 0.03 hectares dated on 14.03.1995. The leased out properties are situated at Mathur village, Pudukkottai District. In the said lease deed which reveals that the 1st defendant was a owner of the leased out properties and the lease period was 11 months. Ex.B2 which is a unregistered lease deed executed by the plaintiff infavour of one Jalaludeen with regarding E schedule suit property dated on 01.08.1999. It reveals that the the 1st defendant was a owner of the leased out properties and the lease period was 15 years Ex.B3 which is a complaint preferred by the plaintiff against the 2nd and 3rd defendants U/S 138 and 142 N.I.Act and U/S 200 CrPC before the Judicial Magistrate Court No;V,

Trichy in the year of 2012. Ex.B4 which is a compensation order passed by the Special Revenue Divisional Officer, Land acquisition National Highways, Pudukkottai infavour of the 2nd defendant with regarding S.F.No: 46/1 of its extent 620 sq.meter. It reveals that the 2nd defendant was a owner of the said acquired land. It further moreover reveals that the 2nd defendant son had participated in the inquiry and produced the relevant documents to prove the ownership. Ex.B5 which is a partnership agreement was entered between the plaintiff and the defendants 1 to 4 with regarding manufacturing dealers in beedies etc under the name and style of “ B.S. SUNDARAVADIVEL MUDALIAR AND SONS” dated on 01.04.1992. Ex.B6 which is a notice issued by the plaintiff to the defendants 1 to 4 dated on 26.11.2012. Ex.B7 which is a reply notice issued by the 1st defendant dated on 03.12.2012. Ex.B9 which is a complaint lodged by the 5th defendant against the plaintiff before the Inspector of Police, Gandhi Market Police Station dated on 04.03.2015. Ex.B11 which is a complaint lodged by the 5th defendant against the plaintiff before the Commissioner of Police dated on 12.03.2015. Ex.B12 which is a intervener petition filed by the 5th defendant in Cr.M.P.No.587/2015 against in Cr.M.P.No.500/2015 before the Principal District and Sessions Court, Tiruchirappalli. Ex.B14 which is a consent letter with regarding settlement of the properties among the plaintiff and the defendants 1 to 4 dated on 03.12.2012. Ex.B15 which is a registered sale deed executed by Murugesan and two others infavour of the 2nd defendant. Ex.B16 which is a registered sale deed executed by Mrs. Kanmani infavour of the 3rd defendant dated on 09.11.2000. Ex.B17 which is a registered sale deed executed by the plaintiff and the defendants 1 to 4 infavour of one Sahul Hameed with regarding the properties situated at Tiruchirappalli Town Sengulam village, Beema nagar keezh kosa street, block No;71, door No;4, T.S.No;1480 of its extent 1001 sq. vacant house site dated on 26.12.2011.

xii) In this case, on considering the abovesaid documentary evidences, there is no rival contention between both parties with regarding Ex.A1 to Ex.A31, Ex.A43 to Ex. A49, Ex.A37, Ex.A38, Ex.A41, Ex.A42 and Ex.B5 to Ex.B13, Ex.B15 to Ex.B17, a sale deeds, legal notices, reply notices, complaint lodged

before the police, a resolution passed in a peace committee Meeting before the Tashildar, Tiruchirappalli, and intervener petition before the Principal District and Sessions Court, Tiruchirappalli respectively. The rival contention is only with regarding the exhibits Ex.A32, Ex.A33, Ex.A34, Ex.A35, Ex.A36 and Ex.B1, Ex.B2, Ex.B3, Ex.B4 and Ex.B14. In this context, we have to look into the abovesaid disputed documentary evidences. On seeing the plaintiffside documents, Ex.A32 which is a registered settlement deed executed by the 1st defendant infavour of his son 5th defendant with regarding D schedule suit properties except 16th item dated on 11.06.2012. Ex.A33, Ex.A34, Ex.A35, Ex.A36 are sale deeds relating to the 16th item of the D schedule suit properties. The said sale deeds have been executed by the the 1st defendant infavour of the 6th, 7th, 8th and 9th defendants dated on 21.12.2011 and 09.01.2012. In the said sale deeds, the description of the properties have stated that Tiruchirappalli Town, Municipal old ward No;4, old T.S No; 312/part of its extent 7.43 sq.meter site including a building and New ward No; F, New block No;10, New T.S.No; 94. The abovesaid four sale deeds are having the same T.S.Number and same extent and only four boundaries are alone differed. Ex.B14 which is a consent letter with regarding settlement of the properties among the plaintiff and the defendants 1 to 4 dated on 03.12.2012. It reads thus follows We B.S.Anandan, B.S. Narayanan, B.S. Velayutham, B.S. Gurusamy and B.S. Arunagiri hereby agree to settle the properties into 5 equal shares. The details of the properties are:

(1) 5 no. Ananthapuram Mettu street house (2) Muslim house.(No.100) (3) 66,67,68 Ananthapuram new st.(warehouse & house) (4) No.1, Mamundi samy house (5) Palakarai Main road-4 shops (6) Malligaipuram godown & vacant land (7) Kandi street house(land value only) (8) Keera Kosa street store. (9) Ramalinganagar-3 plots(land value only) (10) Kattur dippo. (11) Pandu Brindavan plots. (12) Mathur land. (13) No.42, Eda Street building(5 No.) (14) No.48 Eda Street building.(15) No.45, Eda street building(factory), (16) 400 sq.ft. we all agree to settle the matter amicably. It contains 16 properties. Some of the properties mentioned in Ex.B14 have not been mentioned in the description of properties in the suit. Moreover, the suit has been filed with regarding 38 properties. According

to law, Ex.B14 is not admissible in evidence. Because, it does not contain any specific nomenclature and written in a white paper and also not fulfill the requirements as contemplated under section 2(15) of the Stamp Act and Section 17(1)(b) of the Registration Act. **In this case, we pertinently note down the document Ex.B3 .** It is a complaint preferred by the plaintiff against the 2nd and 3rd defendants U/S 138 and 142 N.I.Act and U/S 200 CrPC before the Judicial Magistrate Court No;V, Trichy in the year of 2012.The said complaint is taken on file in STC.No.1174/2013. It reads thus follows “ **(1) The Complainant had been the Administrator of Properties belonging to the Joint family of deceased Sundaravadivel Mudaliar. The Complainant till date had been Managing the entire properties in the name of M.S. Sundaravadivel Mudaliar and B.S. Jayalakshmi, the business in the name of M/s. Sundaravadivel Mudaliar and sons and the properties purchased from the profits of the Hindu Joint family. All the accused along with the complainant had accepted to partition the properties in the name of Sundaravadivel Mudaliar and sons, Jayalakshmi Ammal and properties purchased in the name of the individuals. It had been accepted by all the accused to the Partition that, the properties shown in the understanding had to be partitioned to the complainant, in which certain valuable properties had been allotted to other legal heirs of sundaravadivel Mudaliar and Properties that were built years back had been allotted to B.S. Narayanan and for the reconstruction of the old properties allotted to B.S. Narayanan all the accused had accepted to pay a sum of Rs.1,02,59,204/- towards my client.**

(2) All of the accused had promised to complete the entire partition on or before 31.12.2011 but it had not been acted as promised by all. Further with the pursuance of all the share holders to sell a Plot at Pondicherry, Vacant site at Keela Kosa Street, Bheema Nagar and four shops at Palakarai Main Road for which, the complainant had accepted to sell that, which had been purchased by Sundaravadivel Mudaliar/ The Plot at Pondicherry had been sold for a consideration and share of the complainant had been settled. The settlement for Keela Kosa Street, Beema Nagar and four shops at Palakarai Main Road had not been settled.

(3) For the payment accepted by all the accused to the Complainant to pay

the sum of Rs.1,02,59,204/- on or before 14.02.2012, the 3rd accused had issued a Indian Overseas Bank, Trichy Bheema Nagar Branch Cheque bearing No.704967, dated 14.02.2012 for a sum of Rs.63,92,314/- and for the balance amount the 2nd had issued State Bank of India, Trichy Ramalinga Nagar Branch Cheque bearing No.871259, dated 14.02.2012 for a sum of Rs.38,66,890/-. The Complainant had been regularly perusing all the accused for the payment to be paid and for the execution of Partition Deed/ All the accused had been dragging the complainant/ In the month of February all of you had requested that, the Cheques shall be presented for collection in the month of April for arrangement of funds/ Based upon the assurances the complainant had bonafidely believed and delayed the presentation/ Based upon their assurances in the month of May the complainant had presented the Indian Overseas Bank, Trichy Bheema Nagar Branch Cheque bearing No.704967, dated 14.02.2012 for a sum of Rs.63,92,314/- issued by the 3rd accused the State Bank of India, Trichy Ramalinga Nagar Branch Cheque bearing No.871259, dated 14.02.2012 for a sum of Rs.38,66,890/- issued by the 2nd accused for collection through their Bankers Indian Bank, Trichy Main Branch on 02.05.2012. The Cheque was returned dishonored with an endorsement "Payment Stopped by the Drawer" as per the Memorandums of the Indian Overseas Bank and State Bank dated 04.05.2012.

(4) The Complainant issued a Lawyer's Notice to the accused demanding payment within 15 days time on 11.05.2012/ All the notices had been received the notice on 12.05.2012, the accused had not returned the money and had issued a reply with false and untenable allegations.

(5) The Notice to one of the person by name Arunagiri had been served. He had sent a reply dated 22.05.2012 and had settled the entire amount due to the complainant. Hence the Complainant had exonerated one of his brothers from initiating legal action against him."

(xiii) In this case on perusing the testimony of the 2nd defendant. He has admitted in his cross examination that "பிராதின் 13ம் பத்தியில் நான் தாக்கல் செய்துள்ள 23.09.2011ம் தேதியிட்ட பாகப்பிரிவினை ஒப்பந்த கடிதத்தின் அசல் முதல் பிரதிவாதியிடம் உள்ளது என குறிப்பிடப்பட்டுள்ளது என்றால் அவ்வாறு

கூறியுள்ளது எனக்கு தெரியாது. 3ம் பிரதிவாதி குருவாமியிடம் அந்த ஆவணம் இருந்தது. அதை நான் நீதிமன்றத்தில் பி.வா.சா.ஆ.14 ஆக தாக்கல் செய்துள்ளேன். பி.வா.சா.ஆ.14 ஆவணத்தில் சொத்தை சரிசமமாக 5 பாகங்களாக பிரித்துக் கொள்ளலாம் என கூறப்பட்டுள்ளது என்றால் சரிதான். அந்த பி.வா.சா.ஆ.14 ஆவணத்திற்கு பிறகு வாதிக்கு குறைந்த மதிப்பிலான சொத்துக்கள் கொடுக்கப்பட்டதாக என்னுடைய பிரமாண வாக்குமூலத்தில் கூறியுள்ளேன் என்றால் சரியல்ல. அவ்வாறு வாதி கூறியதாக கூறியுள்ளேன். அவ்வாறு வாதிக்கு குறைந்த மதிப்பிலான சொத்துக்கள் எதுவும் பிரித்து கொடுக்கப்பட்டதா என்றால் இல்லை. பேச்சு வார்த்தை நடந்தது. இது சம்பந்தமாக எனக்கும் வாதிக்குமிடையே ஏதாவது வழக்கு உள்ளதா என்றால் திருச்சி குற்றவியல் நீதித்துறை நடுவர் நீதிமன்றம் எண்.5 ல் சி.1174/2013 என்ற காசோலை மோசடி வழக்கு நிலுவையில் உள்ளது. வாதி தனக்கு கொடுப்பதாக பேசிய சொத்தின் மதிப்பு குறைவாக இருப்பதால் அதற்கு ஏதாவது ஈடு செய்ய வேண்டும் என கேட்டதால் அந்த காசோலையை கொடுத்தேன். அந்த வழக்கு என் மீதும், 3ம் பிரதிவாதி மீதும் நடக்கிறது என்றால் சரிதான். அவ்வாறு பேசிய தொகை 4ம் பிரதிவாதி வாதிக்கு கொடுத்துவிட்டார் என்றால் அதுகுறித்து எனக்கு தெரியாது. நானும் 3ம் பிரதிவாதியும் ரூ.1,02,59,204/- இழப்பீடாக கொடுக்க வேண்டுமென எவ்வாறு முடிவு செய்தோம் என்றால் வாதி அந்த தொகையை முடிவு செய்தார் தன்படி நாங்கள் அந்த காசோலையை கொடுத்தோம். அந்த காசோலை வழக்கு நாளது தேதி வரை நிலுவையில் தான் உள்ளது என்றால் சரிதான். From the evidence of DW2 and Ex.B3, we come to understand that a oral partition was held between the Plaintiff and the defendants 1 to 4 with regarding properties stands in the name of Sundaravadivel Mudhaliar and sons, Jayalakshmi Ammal and properties purchased in the name of the individuals. According to the partition, certain valuable properties had been allotted to the defendants 1 to 4 and the properties that were built years back had been allotted to the Plaintiff and the defendants 2 and 3 had accepted to pay a sum of Rs.1,02,59,204/- infavour of the plaintiff for his share. The defendants 2 and 3 had promised to pay the above said amount on or before 31.12.2011. But, the defendants 2 and 3 had not been paid the amount to the plaintiff within the stipulated time. But, the defendants 2 and 3 had issued a cheques in favour of the plaintiff to the agreed amount. After that the plaintiff had presented the cheque for honoured. But, it was dishonoured.

Subsequently, the plaintiff has filed a private complaint against the defendant 2 and 3 before the Judicial Magistrate Court No.V, Trichy and the same is pending. Moreover, the 4th defendant had also settled the amount to the plaintiff as per the terms of partition.

(xiv) The significant aspect of the case is that the plaintiff has not come to the box to let evidence to prove his case through proper evidences. He has not explained the reasons for adducing evidence to prove the case. In this context, on reading Sec.101, 102, 103 of the Indian Evidence Act.

Sec.101. Burden of proof – Whoever desires any court to give judgments as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Sec.102-On whom burden of proof lies – The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Sec.103- Burden of proof as to particular fact - The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

According to the above said proviso, the burden of proof which lies on the part of the plaintiff. In this case, the plaintiff ought have proved that his parents and his brother Subramanian were died intestate and he and the defendants 1 to 4 have been jointly running the family business without any division and in recognition of the nature and character of the joint family properties, they had agreed to divide the properties amicably and inconnection with a statement was made in writing dated on 29.03.2011.If the 1st defendant is being a eldest family member, the original joint statement was handed over to him. The the xerox copy of the joint statement was received by the plaintiff and the defendants 2 to 4 . Later on, the 1st defendant was settled the ‘D’ Schedule properties infavour of his son 5th defendant without the knowledge of plaintiff and the defendants 2 to 4 dated on

11.06.2012. The statement made by the 1st defendant that the properties settled in favour of his son which were purchased out of his own money is incorrect and unbelievable. but, herein , the plaintiff has not proved that the suit properties have not partitioned so far and existing as a joint family properties. According to the admission of DW2 and other material evidences, we come to understand that a oral partition was held between the plaintiff and the defendants with regarding the properties stands in the name of the Sundaravadivel Mudhaliyar and sons, Jayalakshmi Ammal and the properties purchased in the name of the plaintiff and the defendants 1 to 4 in the year of 2011. According to the said oral partition, the properties had been allotted separately to the plaintiff and the defendants 1 to 4 and the 2nd , 3rd and 4th defendants had to give some amount to the plaintiff for equaling his share. Accordingly, the 4th defendant was settled the amount to the plaintiff. But, the 2nd and 3rd defendants have not settled the amount so far. Due to non-settlement, the plaintiff has filed a criminal complaint against the 2nd and 3rd defendants. As per the oral partition, the plaintiff and the defendants 1 to 4 have been enjoying the allotted properties separately since 2011. Therefore, this court decides that the suit properties are not still joint family properties and already an oral partition took place in the year of 2011 and as a result of it, the plaintiff and the defendants 1 to 4 have entered into various sales in respect of properties allotted to them. Accordingly, answering theses issues.

13) Issue No:6 and additional issue No:2

a) In these issues, we let us to decide, whether the suit is bad for non-joinder of necessary properties or bad for partial partition?

b) In this case, the 2nd and 3rd defendants contention is that the plaintiff has purposely omitted some other properties which are also available for partition. Those properties are also have to be included in the partition. (1) an extent of 3150 sq.ft. at Keelapudur Village in Puthur Village in Old Ward 8, Block 24 T.S.No. 2303, (2) an extent of 1575 sq.ft. at Keelapudur Veedhi in the Northern row in Puthur in Old Ward 8, T.S.No.2303, (3) an extent of 6300 sq.ft. in Sengulam Village in Old Ward 24, Old T.S.No.2302, (4) an extent of 333 sq.ft. at Mettu Street, Eda Street Road in Varaganeri Village in New ward 'H' Block 13 T.S.No.74,

(5) an extent of 2400 sq.ft Plot No.27 south of Third Street, Brindavanam, Saram Village in Pondicherry, (6) The house property having Door No.42, Eda Street Road, an extent of 1715 sq.ft., building with structure (7) The house property having Door No.44 Eda Street Road an extent of 582 sq.ft. the building with structure, (8) The property having Door No.68 in Anandapuram New Street an extent of $20 \times 63 = 1260$ sq.ft. The above said items have to be included in the plaint. Hence, without including the above said properties, the suit is bad for partial partition.

c) In this case, the plaintiff has stated in a reply statement that even other wise, if the property of the 2nd defendant is not included in the suit, the remedy is otherwise. The first defendant has not pleaded that the suit is bad for partial partition.

d) In this case, on perusing the evidences, the 2nd and 3rd defendants have not placed any documents relating to the non inclusion of the above said properties in the suit. but, however, according to the admission of the plaintiff, some of the properties have not been included in the suit. Particularly, the second defendant properties have not been included in the suit. The said fact is also admitted by the second defendant in his cross examination that “எந்த சொத்து தாவாவில் சேர்க்காமல் விட்டு போனது என கூறுகிறேன் என்றால் 1984ல் என் பெயரில் கிரையம் பெற்ற மாத்தூர் கிராமம் சர்வே எண்.46/1ல் உள்ள 97 செண்ட் நிலம்சேர்க்கப்படவில்லை. அது என்னுடைய சுய சம்பாத்திய சொத்து ஆகும். தாவா தாக்கல் செய்யும்போது மேற்சொன்ன நிறுவனத்தின் பெயரில் உள்ள 7 சொத்துக்கள் விடுபட்டுவிட்டது என கூறுகிறேனா என்றால் ஆமாம். ராமலிங்க நகரில் 3 பிளாட்டுகள் இருக்கிறது என்றால் சரிதான். அந்த பிறாட்டுகள் என்னுடைய பெயரிலும் 3,4ம் பிரதிவாதிகள் பெயரில் வாங்கப்பட்டது. நான் அந்த பிளாட்டில் வீடுகட்டியுள்ளேன் என்றால் சரிதான். அந்த பிளாட்டுகள் எப்போது வாங்கினேன் என்றால் சரியாக ரூபகம் இல்லை. 1982 அல்லது 1983ல் இருக்கலாம். எனது பிளாட்டில் எல்ஐசியில் என் பெயரில் லோன் வாங்கி வீடு கட்டினேன். அந்த வீட்டில் முதல் தளத்தில் முதலில் அரசு துறை ஒன்றிற்கு வாடகைக்கு விட்டிருந்தேன் என்றால் சரிதான். தற்போது அது காலியாக உள்ளது. அந்த அரசு துறைக்கு எத்தனை வருடம் வாடகைக்க விட்டிருந்தேன் என்றால் 10 வருடங்கள் விட்டிருந்தேன். அந்த வருடம் வீடு கட்டினேன்

என்றால் 2001ம் ஆண்டு கட்டினேன். அந்த 10 வருட வாடகையை நான் பொதுக் குடும்ப நிறுவனத்திற்கு கொடுத்தேனா, அல்லது பொதுக் குடும்பத்தின் கர்த்தாவிடம் கொடுத்தேனா என்றால் அந்த கடனை கட்டுவதற்கு பயன்படுத்தினேன்.” From the evidence of the 2nd defendant and other material evidences, we come to understand that the 2nd defendant properties and some other family properties have not been included in the suit. Therefore, this court decides that the suit is bad for partial partition. Accordingly, answering theses issues.

14) Additional issue No:3

a) In this issue , we let us to decide, whether the suit is barred by Limitation?

In this case, the contested 1st and 5th defendant have contented that during the pendency of the suit, the 2nd defendant was received a compensation amount of Rs.20,00,000/- from the 10th defendant. Hence, the partition is effected. The said evidences are proved that the oral partition is duly effected and acted upon in accordance with the terms as agreed by the plaintiff and the defendants 1 to 4 since 18.05.1983. If the plaintiff is really wanted to get a legal remedy in accordance with law or he finds any imbalance in respect of the above said oral partition, he ought have filed a suit for partition and set aside the sale within the period of three years and the same was lapsed in the year of 1985 itself. Hence, the suit is barred by Limitation Act.

b) In this case, the plaintiffs side contention is that the allegation in paragraph 6 of the written statement of the 1st defendant that the plaintiff ought to have filed a suit for partition after setting aside the sales and in view of the fact that the time to set aside the sales elapsed in 1986, the suit for partition is not maintainable and it is a wrong statement of law.

c) In this case, on considering both side contentions and evidences, Ex.A22 -a registered sale deed was executed by 3rd defendant in favour of 1st defendant with regarding 15th item of D schedule suit property dated on 18.09.1983. The said fact is also admitted by DW2. In this context on reading Article 110 of the Limitation Act. It reads as thus follows:

Description of suits	period of limitation	Time from which period
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begins to run

By a person excluded from a joint family property to enforce a right to share therein.

Twelve years

when the exclusion becomes known to the plaintiff

According to the above said proviso, the suit has been filed within the period of 12 years. But, the plaintiff has not filed the suit within the period of limitation. but, the present suit is filed in the year of 2013. Moreover, the plaintiff has also not stated that he was not aware about the abovesaid sale within the period of limitation and also not seeking the relief of setting aside the above said sale. Therefore, this court decides that the suit is barred by limitation. Accordingly, answering this issue.

15) Issue No:4

a) In this issue, we let us to decide, Is it true to state that basing such oral partition D2 was allotted a compensation by D10 also?

b) In this case, the contested 1st and 5th defendant have contented that during the pendency of the suit, the 2nd defendant was received a compensation amount of Rs.20,00,000/- from the 10th defendant. Hence, the partition is effected.

c) In this case, the plaintiff has stated that he is not aware of the fact that the 2nd defendant has received compensation amount is said to have been received after the suit, the remedy will be worked out later.

d) In this case, on considering the evidences, the contested 1st and 5th defendants have not placed any material documents about the 2nd defendant was received a compensation amount of Rs.20,00,000/- from the 10th defendant. but, they have placed Ex.B4 a compensation order passed by the Special Revenue Divisional Officer, Land acquisition National Highways, Pudukkottai in favour of the 2nd defendant. It reveals that நில உரிமையாளருக்கு வழங்கப்படும் இழப்பீட்டுத் தொகை:

வ.எண்.	புல எண்	வகைப்பாடு	உட்பிரிவுக்குப் பின் புல எண்	ஆர்ஜித விஸ்தீர்ணம் (ச.மீ)	நிலமதிப்பு ச.மீ.1 க்கு ரூ.
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50	46/1	தனியார் மானாவாரி	46/1A	620	1724
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மேற்கண்ட கையக நிலம் புல எண்.46/1 கிராமக்கணக்குகளில் தனியார் மானாவாரி என வகைப்படுத்தப்பட்டு யு.டி.ஆர். அ பதிவேட்டில், தற்போதைய கணக்குகளிலும் பட்டா எண்.1193-ன் படி சுந்தரவடிவேல் முதலியார் மகன் வேலாயுதம் என்பவர் பெயரில் பதிவாகியுள்ளது. அதிகாரம் பெற்ற அலுவலர் மற்றும் சிறப்பு மாவட்ட வருவாய் அலுவலர், புதுக்கோட்டை அவர்களின் தேசிய நெடுஞ்சாலைச் சட்டம் டபிரிவு 3G(3)-ன் படியான விசாரணையின் போது கையக நிலத்தின் பேரில் உரிமை கோரி வேலாயுதம் மகன் சுப்ரமணியன் என்பவர் ஆஜராகி வாக்குமூலம் அளித்து தொடர்புடைய ஆவணங்களின் நகல்களை தாக்கல் செய்துள்ளார். வாக்குமூலத்தில் கையக நிலம் தனது தந்தைக்கு சொந்தமானது எனவும், அவரது அனுபவத்தில் இருப்பதாகவும் தெரிவித்து, கையக நிலத்திற்குரிய இழப்பீட்டுத்தொகையை தனது தந்தை சுந்தரவடிவேல் முதலியார் மகன் வேலாயுதம் என்பவருக்கே வழங்குமாறு கேட்டுக்கொண்டுள்ளார். இக்கையக நிலத்தி் கட்டுமானங்களோ, மரங்களோ எதுவும் இல்லை. மேற்படி கையக நிலம் குளத்தூர் சார்பதிவாளர் அலுவலகத்திலிருந்து பெறப்பட்ட வில்லங்கச் சான்றிலிருந்து எவ்வித வில்லங்கத்திற்கும் உட்படுத்தப்படவில்லை எனக் கண்டறியப்பட்டது.

எனவே, மேற்கண்ட கையக நிலத்திற்குரிய இழப்பீட்டுத் தொகை மற்றும் 10% கூடுதல் தொகை ஆகியவற்றை கீழ்க்கண்டவாறு பட்டாதாரர் சுந்தரவடிவேல் முதலியார் மகன் வேலாயுதம் என்பவருக்கு வழங்க ஆணையிடப்படுகிறது.

புல எண்.	ஆர்ஜித விஸ்தீரணம்	நிலமதிப்பு	கட்டுமா ன மதிப்பு	கூடுதல்	3G(2)- ன்படி 10% கூடுதல் தொகை	மொத்த தொகை	வருமான வரி	இழப்பீட்டு த் தொகை ரூ.
46/1A	620	1068880	-	1068880	106888	1175768	-	1175768

On perusing the testimony of the 2nd defendant, he has admitted in his cross examination that “ மாத்தூர் கிராமத்தில் உள்ள சொத்துக்களில் ஒரு பகுதியை தேசிய நெடுஞ்சாலைக்காக அரசாங்கத்தால் ஆர்ஜிதம் செய்யப்பட்டது என்றால் சரிதான். அந்த மாத்தூர் கிராம சொத்துக்கள் இந்த வழக்கில் சேர்க்கப்பட்டுள்ளது

என்றால் சரிதான். அந்த மாத்தூர் கிராம சொத்துக்கள் அனைத்தும் பொது சொத்துக்கள் தான் என்றாலும், அதில் எங்கள் அனைவருக்கும் பங்குண்டு என்றாலும் சரிதான். அவ்வாறு நில ஆர்ஜிதம் செய்து வழங்கப்பட்ட இழப்பீட்டு தொகையில் ஒரு பகுதியாக ரூபாய் பதினொன்று லட்சத்தை நான் வாங்கிக் கொண்டேன் என்றால் சரிதான்.” From the evidences , we come to understand that the National Highways Authority , Pudukkottai was acquired a land for forming a road in S.F.No: 46/1 of its extent 620 square meter land situated at Mathur village and awarded a compensation amount of Rs.11,75,768/- and it was received by the 2nd defendant. but, the said land was not included in the suit property. Moreover, the plaintiff was not raised any objection to receive the compensation amount by the 2nd defendant. Therefore, this court decides that based on such oral partition a compensation was awarded by the 10th defendant infavour of the 2nd defendant. Accordingly, answering this issue.

16) Additional issue No:1

a) In this issue , we let us to decide,whether the 8th defendant was purchased the 16th item of ‘D’ schedule property as a bonafide purchaser?

b) In this case, the 8th defendant has contented that she was purchased the last item of the ‘D’ schedule property from the 1st defendant by virtue of a registered sale deed Ex.A36 dated on 09.01.2012. She has been in possession and enjoyment of the purchased property since 09.01.2012. She is a bonafied purchaser. The 1st defendant was executed two sale deeds infavour of the 6th and 7th defendants. In the said sale deeds, the 2nd defendant was signed as a witness. It is confirmed the ownership and title of the 1st defendant. Now, the 2nd defendant has deliberately suppressed the fact of the oral partition and conclusively deposed infavour of the plaintiff for getting wrongful gain.

c) In this case, the plaintiff has contented that the 1st defendant sold last item of the ‘D’ schedule properties by virtue of four sale deeds infavour of the defendants 6 to 9. The last item of the ‘D’ schedule property which does not exclusively belonging to the 1st defendant and it was purchased from the income of the joint family business. The sale deeds stands in the name of the defendants 6 to 9 are invalid and not binding upon himself.

d) In this case, on considering the evidences, the 8th defendant has not come to the box to let evidence that she was purchased the last item of the 'D' schedule property from the 1st defendant by virtue of a registered sale deed Ex.A36 and She has been in possession and enjoyment of the purchased property since 09.01.2012. On the otherhand, the plaintiff has also not come to the box to let evidence that the last item of the 'D' schedule property which does not exclusively belonging to the 1st defendant and it was purchased from the income of the joint family business. The sale deeds stands in the name of the defendants 6 to 9 are invalid and not binding upon himself. In this context on perusing Ex.A36 which reveals that the 8th defendant was purchased the one portion in the 16th item of the 'D' Schedule property from the 1st defendant dated on 09.01.2012. The second defendant is also one of the attesor in the said sale deed. As per the sale deed, the said property has been possession in the hands of the 8th defendant. In this case, this court has earlier decided in issues No: 2,3 &5 that the suit properties are not still joint family properties and already an oral partition took place in the year of 1982 and as a result of it, the plaintiff and the defendants 1 to 4 have entered into various sales in respect of properties allotted to them. Therefore, this court decides that the 8th defendant was purchased the 16th item of D schedule property from the 1st defendant by virtue of registered sale deed ExA36 dated on 09.01.2012 and she is bona fide purchaser. Accordingly, answering this issue .

17) Additional issue No:2

a) In this issue , we let us to decide, whether the plaintiff is entitled to get the relief of injunction restraining the 10th defendant from dispersing the compensation amount to the defendants 1to4 excluding the plaintiff in respect of the suit lands situated at Mathur village.

b) In this case, the plaintiff has contented that a portion of the lands in the 'D' schedule properties are sought to the acquired by the National High ways Authority . The 1st defendant is taking advantage of the fact that the sale deed for the lands standing in his name, he is making arrangements to receive the compensation amount. The 10th defendant who is a dispersing authority of the compensation amount. Hence, the plaintiff is entitled to get 1/5 share in the suit

properties and granting a injunction restraining the 10th defendants from the dispersing the compensation amount to the defendants 1 to 4 excluding the plaintiff in respect of the suit lands situated at Mathur Village.

c) In this case, the contested 1st an 5th defendant have contented that the plaintiff is well aware about the fact of the partition and allotment of shares to the 2nd defendant. The National Highways Authority was acquired a lands of the defendants 1to4 for forming road. The defendants 2, 3, 4 have received a compensation from the 10th defendant. The plaintiff has not raised any objection to receive the compensation. but, he has raised a objection to receive the compensation by the 1st defendant. He has no right to raise a objection. Hence, plaintiff is not entitled to get the relief of injunction restraining the 10th defendant from dispersing the compensation amount to the defendants 1to4 .

d) In this case on considering bothside contentions and evidences, Ex.B4 a compensation order passed by the Special Revenue Divisional Officer, Land acquisition National Highways, Pudukkottai infavour of the 2nd defendant. The said fact is also admitted by the 2nd defendant and he has received a compensation amount from the 10th defendant. Moreover, the plaintiff has stated that he is not aware of the fact that the 2nd defendant was a received compensation amount is said to have been received after the suit, the remedy will be worked out later. From the admission of the plaintiff and the 2nd defendant , we come to understand that the 2nd defendant was received a compensation from the 10th defendant and inconnection with, the plaintiff has not raised any objection so far. In this case, this court has already decided in issues No: 2,3,5 that the suit properties are not still joint family properties and already an oral partition took place in the year of 2011 and as a result of it, the plaintiff and the defendants 1 to 4 have entered into various sales in respect of properties allotted to them. After due inquiry, the 10 th defendant was acquired the land of the 1st defendant for forming the road . Therefore, this court decides that the plaintiff is not entitled to get the relief of injunction restraining the 10th defendant from dispersing the compensation amount to the defendants 1to 4 excluding the plaintiff in respect of the suit lands situated at Mathur village. Accordingly, answering this issue.

18) Issue No:1

In this issue , we let us to decide, whether the plaintiff is entitled for a preliminary decree of 1/5 share in the suit properties ?

In this case, this court has earlier decided in the foregoing issues N:2,3,5 and additional issues N: 1 and 2 that the suit properties are not still joint family properties and already an oral partition took place in the year of 2011 and as a result of it, the plaintiff and the defendants 1 to 4 have entered into various sales in respect of properties allotted to them and the suit is bad for partial partition and the suit is barred by limitation and the plaintiff is not entitled to get any injunction against the 10th defendant. Therefore, this court decides that the plaintiff is not is entitled to get a preliminary decree of 1/5 share in the suit properties .

In the result, the suit is dismissed. both parties are bearing their own costs.

Dictated to the Steno- typist, Grade III and directly typed by her, corrected and pronounced by me in open court, this the 28th day of February 2020.

Sd/(XXXX)
III Additional District Judge,
Tiruchirappalli.

List of Plaintiff Documents

Ex. No.	Date	Description of Documents	Remarks
Ex.A1	19.12.1945	A registered sale deed was executed by Mohamed Mustafa Sahib and two others infavour of B.S.Sundaravadivel Mudaliyar	Original
Ex.A2	10.02.1949	A registered sale deed was executed by H.Khathmull Sowhar infavour of B.S.Sundaravadivel Mudaliyar	Original
Ex.A3	07.09.1950	A registered sale deed was executed by H.Khathmull Sowhar infavour of B.S.Sundaravadivel Mudaliyar	Original
Ex.A4	04.10.1961	A registered sale deed was executed by H.A.Khalik and seven others infavour of B.S. Sundaravadivel Mudaliyar	Original
Ex.A5	05.10.1947	A registered sale deed was executed by H. Khathmull Sowhar infavour of Jayalakshmi Ammal	Original

Ex.A6	06.03.1957	A registered sale deed was executed by Manickam infavour of Jayalakshmi Ammal	Original
Ex.A7	01.11.1958	A registered sale deed was executed by Subramaniya Iyyer and one another infavour of Jayalakshmi Ammal	Original
Ex.A8	30.05.1960	A registered sale deed was executed by Veerasamy Naidu and two others infavour of Jayalakshmi Ammal	Original
Ex.A9	04.01.1965	A registered sale deed was executed by P.Thabamani infavour of B.S.Subramaniya Mudaliyar	Original
Ex.A10	30.01.1968	A registered sale deed was executed by Karuppan infavour of B.S.Subramaniya Mudaliyar	Original
Ex.A11	27.05.1968	A registered sale deed was executed by Balammal infavour of B.S.Subramaniya Mudaliyar	Original
Ex.A12	24.03.1969	A registered sale deed was executed by Virithi santh Sait nfavour of B.S.Subramaniyan	Original
Ex.A13	12.12.1960	A registered sale deed was executed by Mariyayee Ammal and one another infavour of 1 st defendant	Original
Ex.A14	12.12.1960	A registered sale deed was executed by Rengasamy infavour of 1 st defendant	Original
Ex.A15	26.12.1960	A registered sale deed was executed by Balamuthu infavour of 1 st defendant	Original
Ex.A16	10.05.1961	A registered sale deed was executed by Thangam Malavarar infavour of 1 st defendant	Original
Ex.A17	21.06.1961	A registered sale deed was executed by Maruthamuthu Malavarar infavour of 1 st defendant	Original
Ex.A18	11.09.1961	A registered sale deed was executed by Arunachalam Pillai infavour of 1 st defendant	Original
Ex.A19	11.09.1961	A registered sale deed was executed by Maruthayee Ammal and one another infavour of 1 st defendant	Original
Ex.A20	30.08.1962	A registered sale deed was executed by Balamuthu Malavarar and two others infavour of 1 st defendant	Original
Ex.A21	06.10.1964	A registered sale deed was executed by Thangam Malavarar infavour of 1 st defendant	Original
Ex.A22	18.05.1983	A registered sale deed was executed by 3 rd defendant infavour of 1 st defendant.	Certified copy
Ex.A23	05.09.1960	A registered sale deed was executed by Ponnusamy Mudaliyar infavour of B.S.Sundaravadivel Mudaliyar	Certified copy

Ex.A24	01.02.1965	A registered sale deed was executed by T.V.Narayanasamy Naidu in favour of the plaintiff	Certified copy
Ex.A25	05.07.1970	A registered sale deed was executed by Singaram and one another in favour of 2 nd defendant	Original
Ex.A26	19.09.1986	A registered sale deed was executed by V.T.K.Kannan in favour of 2 nd defendant and Arun Structural Factory	Original
Ex.A27	15.07.1980	A registered sale deed was executed by Namasivayam in favour of 2 nd defendant	Certified copy
Ex.A28	26.03.1979	A registered sale deed was executed by Shanmugam and one another in favour of 3 rd defendant	Original
Ex.A29	25.08.1976	A registered sale deed was executed by Jayaganthammal in favour of 4 th defendant	Original
Ex.A30	15.07.1980	A registered sale deed was executed by K.Padmanaban in favour of 4 th defendant	Certified copy
Ex.A31	28.08.1986	A registered sale deed was executed by M.S.Sheik Mohammed in favour of the plaintiff and the defendants 1 to 4	Original
Ex.A32	11.06.2012	A registered settlement deed was executed by 1 st defendant in favour of the 5 th defendant	Certified copy
Ex.A33	21.12.2011	A registered sale deed was executed by 1 st defendant in favour of A.K.Anvar Basha	Certified copy
Ex.A34	21.12.2011	A registered sale deed was executed by 1 st defendant in favour of M.Abdul Rahman	Certified copy
Ex.A35	21.12.2011	A registered sale deed was executed by 1 st defendant in favour of A.S.Parakath Fathima	Certified copy
Ex.A36	09.01.2012	A registered sale deed was executed by 1 st defendant in favour of S.Mumthaj Begum	Certified copy
Ex.A37	03.03.2013	Legal notice issued by the plaintiff to the 10 th defendant.	Office copy
Ex.A38	14.05.2012	Reply notice issued by the 1 st defendant	Office copy
Ex.A39	03.05.2008	A letter written by the 1 st defendant	Original
Ex.A40	09.06.2008	A letter written by the 5 th defendant	Original
Ex.A41	26.12.2011	A registered sale deed was executed by the plaintiff and the defendants 1 to 4 in favour of Mrs.S.Gomathi	Certified copy
Ex.A42	26.12.2011	A registered sale deed was executed by the plaintiff and the defendants 1 to 4 in favour of P.Sahul Hameed	Certified copy

Ex.A43	08.04.2015	A resolution passed in a Peace Committee Meeting before the Tashildar, Trichirappalli East.	Xerox Copy
Ex.A44	10.10.1967	A registered sale deed was executed by Kandasamy Konar infavour of B.S.Subramaniya Mudaliyar	Certified copy
Ex.A45	11.10.1969	A registered sale deed was executed by Renganathan and one another infavour of 1 st defendant	Certified copy
Ex.A46	13.11.1997	A registered sale deed was executed by A.S.Abdul Kathar and one another infavour of the plaintiff and the defendants 1 to 4	Certified copy
Ex.A47	18.05.1998	A registered sale deed was executed by A.S. Ansar and one others infavour of the plaintiff and the defendants 1 to 4	Certified copy
Ex.A48	15.07.1968	A registered sale deed was executed by Deenadhayan infavour of 1 st defendant	Certified copy
Ex.A49	23.01.2012	A registered sale deed was executed by the plaintiff and the defendants 1 to 4 infavour of Mrs.R.Mallika	Certified copy

List of Defendants Documents :

Ex. No.	Date	Description of Documents	Remarks
Ex.B1	14.03.1995	A registered lease deed was executed by the 1 st defendant infavour of the plaintiff son namely Saravanan	Certified copy
Ex.B2	01.08.1999	A unregistered lease deed executed by the plaintiff infavour of one Jalaludeen	Original
Ex.B3	---	The plaintiff has filed a complaint against 2 nd and 3 rd defendants u/s.138 and 142 N.I.Act and u/s.200 Crpc. before the Judicial Magistrate Court No.5, Trichy	Certified copy
Ex.B4	---	A compensation order passed by the Special Revenue Divisional Officer, Land acquisition National Highways, Pudukkottai infavour of the 2 nd defendant.	Xerox copy
Ex.B5	01.04.1992	A partnership agreement was entered between the plaintiff and the defendants 1 to 4	Xerox copy
Ex.B6	26.11.2012	The plaintiff was issued a notice to the defendants 1 to 4	Served copy
Ex.B7	03.12.2012	A reply notice issued by the 1 st defendant to the plaintiff	Office copy
Ex.B8	---	Acknowledgement card	Original
Ex.B9	04.03.2015	The 5 th defendant was lodged a complaint before the	Hand copy

		Inspector of Police, Gandhi Market Police Station	
Ex.B10	04.03.2015	A receipt issued by the Sub Inspector of Police, Gandhi Market Police Station	Xerox copy
Ex.B11	12.03.2015	The 5 th defendant was lodged by the complaint before the Commissioner of Police, Trichy	Hand copy
Ex.B12	----	The 5 th defendant was filed a intervener petition in Cr.M.P.No.587/2015 against in Cr.M.P.No.500/2015 before the Principal District and Sessions Court, Tiruchirappalli.	Hand copy
Ex.B13	27.05.2015	3 rd defendant was issued a notice to the plaintiff and the defendants 1, 2, 4 .	Served copy
Ex.B14	23.09.2011	A consent letter with regarding settlement of the properties with the plaintiff and the defendants 1 to 4	Original
Ex.B15	09.01.1984	A registered sale deed was executed by Murugesan and two others infavour of the 2 nd defendant.	Certified copy
Ex.B16	09.11.2000	A registered sale deed was executed by Mrs.Kanmani infavour of 3 rd defendant	Certified copy
Ex.B17	26.12.2011	A registered sale deed was executed by the plaintiff and the defendants 1 to 4 infavour of one Sahul Hameed.	Certified copy

List of Plaintiffs side witnesses : Nil

List of Defendant side witnesses :

DW.1 - A. Balavadivel Murugan

DW.2 - B.S.Velayutham

/True Copy/

III Additional District Judge,
Tiruchirappalli.