

IN THE COURT OF THE DISTRICT MUNSIF, PONNERI.

PRESENT: Selvi.A.Keerthana, B.A., L.L.B.,
District Munsif, Ponneri.

Friday, the 28th day of November 2025.

I.A. NO.4 OF 2024
in
O.S. NO.134 OF 2018

1. P.Dharamalingam (Decd.)
2. G.Varalakshmi
3. T.Jayanthi
4. P.Pushpa Petitioners/Plaintiffs

Versus

1. S.Hemavathy
2. S.Meenatchi Sundaram
3. S.Ramesh @ Lakshmipathy
4. S.Perumal
5. R.Bhavani Respondents/Defendants

This petition came on 14.11.2025 for final hearing before me in the presence of Mr.E.Prabu, Learned counsel appearing for the petitioners/plaintiffs and Mr.P.Amarnath, Learned counsel appearing for the Respondents/Defendants. Upon hearing both sides, after perusing the material case records and having stood over for consideration till this day, this Court delivers the following:

ORDER

This petition has been filed under Order XVIII Rule 1 R/W Section 151 of CPC to direct the defendants to begin the evidence first in the above suit.

2. Brief averments of the affidavit filed by the petitioners are as follows:

The petitioners herein are the plaintiffs in the suit. The petitioners submit that originally the plaint was filed by their father late Dharmalingam for partition and declaration. The petitioners herein are the legal heirs of the said Dharmalingam. The defendants 2 to 5 are legal heirs of late K.P.Sampanam. The petitioners submit that suit schedule property was originally purchased by their paternal grandmother Rajammal by sale deed dated 05.01.1965 after she died intestate suit schedule property was given to Arpudammal @ Pappammal as she was unmarried and remained spinster. Even Arpudammal died intestate on 14.12.2013 after her demise suit property devolved upon her brothers. After the death of Arpudammal are other legal heirs was entitled to 1/3rd share in the suit property which was not partitioned. During pendency of this suit the defendants have filed written statement specifically admitting that the suit property is owned possessed by Rajammal after her death Arpudammal, K.P.Dharmalingam and Hemavathy orally relinquished the property in favour of K.P.Sambandam therefore defendants 2 to 5 acquired the same the legal heirs of late K.P.Sambandam. Hence defendants contested the claim for partition made by plaintiff as the defendants admitted the title of Rajammal the suit property automatically devolved on her sons and daughters also the defendants admitted to the fact as there was no partition of the suit property after the death of Rajammal. Moreover, the defendant projected the case of oral relinquishment by the 1st plaintiff and other legal heirs of Rajammal in favour of legal heir namely K.P.Sambandam. Thus the defendants shall prove the alleged oral relinquished projected by them in their written statement hence this petition.

3. Brief averments of the counter filed by the respondent are as follows:

The respondents are the defendants in the suit and they submit that they have opposed the plaintiffs claim for declaration and partition further the suit property belongs to them absolutely on the basis of partition deed dated 22.03.2008 registered as Doc.No.2434 of 2008 hence the defendants have not admitted the claim of the plaintiffs the mere admission of relationship of Rajammal and Paramasivam cannot be considered as an admission on the side of the plaintiff of the provision in which this application is filed can only if the defendant admits the plaintiff claim or pleases discharged in the above suit. Hence prays for dismissal of this petition.

4. Neither the petitioners nor the respondents have placed any oral or documentary evidence before this Court.

5. Point for determination :

Whether this petition can be allowed or not.

6. DISCUSSION AND FINDINGS :

6.1. Heard. Upon a careful perusal of the materials placed on record, it is noted that the present petition has been filed by the petitioners/plaintiffs seeking a direction to call upon the defendants to commence the evidence in a suit instituted for partition and declaration in respect of the suit schedule property. The case of the plaintiffs is that the suit property was originally purchased by their grandmother, Rajammal, under a registered sale deed dated 05.01.1965. Upon her intestate demise, the property devolved upon her daughter, Arputhammal @ Pappammal, who also died intestate on 14.12.2013. According to the plaintiffs, the estate thereafter devolved

upon the brothers of Arputhammal, and consequently, the respective legal heirs are entitled to equal one-third shares in the suit property.

6.2. The petitioners submit that, in the written statement, the defendants have admitted that the property originally belonged to Rajammal and that it devolved upon Arputhammal, K.P. Dharmalingam, and Hemavathy. The defendants, however, have raised a specific plea that these individuals orally relinquished their rights in favour of K.P. Sammandham, from whom defendants 2 to 5 claim title as his legal heirs. The plaintiffs therefore argue that since the plea of oral relinquishment is an affirmative defence raised by the defendants, the defendants must bear the initial burden of proving such relinquishment and consequently be directed to begin the evidence.

6.3. Per contra, the respondents/defendants contend that the right to begin is governed by Order XVIII Rule 1 CPC, which clearly provides that the plaintiff ordinarily has the right to begin, except in cases where the defendant admits the facts alleged by the plaintiff and rests his defence solely on a point of law or on additional facts. Since no such admission exists in the present case, the defendants claim that the normal rule must prevail and the plaintiffs must commence the evidence.

6.4. For proper appreciation, Order XVIII Rule 1 CPC is relevant and is extracted below:

“The plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part

of the relief which he seeks, in which case the defendant has the right to begin.”

6.5. Under the scheme of civil procedure, the general rule is that the plaintiff must first prove the cause of action pleaded and discharge the burden of establishing entitlement to the reliefs sought. The burden of proof is also governed by Section 102 of the Indian Evidence Act, 1872, which reads as follows:

“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.”

In the present context, if no evidence were adduced on either side, the suit for partition and declaration would necessarily fail because the plaintiffs carry the burden of establishing their right, title, and share in the suit property.

6.6. The petitioners place reliance on the defendants’ plea of oral relinquishment and argue that the burden shifts to the defendants. While it is true that a party asserting an affirmative defence must establish it, such burden arises only after the plaintiffs discharge their foundational burden of proving their own title and entitlement. The court does not examine the defence unless the plaintiffs first establish a prima facie case warranting adjudication. The principle is well-settled that the plaintiff cannot avoid beginning merely because the defendant raises an additional plea requiring proof.

6.7. Moreover, Order XVIII Rule 1 CPC confers discretion on the court and is not mandatory in nature. This principle has been well clarified by the Hon’ble Supreme Court in *Jami Venkata Suryaprabha & Another v. Tarini Prasad Nayak & Others*, 2024 INSC 1001 wherein the Court held that:

“Order XVIII Rule 1 indeed provides for the plaintiff's right to begin the evidence but not the court's obligation to ask the plaintiffs to begin first. There is no impediment for the court to call upon either party to lead evidence first, depending upon the facts and circumstances of the case and the nature of the issues framed. Neither party can insist that the other one should be asked to lead it first. It all depends upon what the Court deems proper in the circumstances. Where it finds that defendant's plea strikes at the root of the case, there would be no hitch in asking him/her to prove such a plea first which can lead to disposal of the case

6.8. In the present case, the issues framed involve the plaintiffs' claim for partition, their claim of inheritance, and the validity and effect of two alleged partition deeds dated 22.03.2008 and 04.08.2008. These are foundational matters that the plaintiffs must establish through affirmative evidence. Only thereafter will the court be in a position to consider the defendants' plea of oral relinquishment. The plaintiffs, having instituted the suit seeking declaratory and partition reliefs, cannot circumvent their statutory duty to begin evidence by relying upon a defence plea raised by the defendants.

6.9. The court finds no admission by the defendants of the essential facts constituting the plaintiffs' cause of action so as to attract the exception under Order XVIII Rule 1 CPC. On the contrary, the defendants dispute the plaintiffs' entitlement, assert oral relinquishment, and rely on subsequent registered documents. Therefore, this is not a case where the defendants' defence is purely legal or based solely on additional facts admitted by the plaintiffs. The normal rule must therefore apply.

6.10. In view of the above discussion, the settled statutory principles under Order XVIII Rule 1 CPC, the rule of burden of proof under Section 102 of the Evidence Act, and the authoritative precedent of the Hon'ble Supreme Court, this Court is of the considered opinion that no grounds exist to grant the relief sought in the present petition.

6.11. Accordingly, the petition stands dismissed. The plaintiffs are directed to commence the trial and lead their evidence first. All other issues, including the defendants' plea of oral relinquishment and the validity and admissibility of the alleged partition deeds, shall be adjudicated on the basis of evidence and considered at the time of final disposal of the suit.

7. Result :

In the result, this petition is dismissed. No costs.

Dictated by me to the steno-typist, directly typed by her in her desktop, corrected and pronounced by me in the open court, on this the 28th day of November 2025.

DISTRICT MUNSIF,
PONNERI.

Both side witnesses and documents:- NIL

DISTRICT MUNSIF,
PONNERI.

Fair/ Draft Order
I.A.No.4/2024
O.S.No.134/2018
Date:28.11.2025
DMC,PNI