

I ADDITIONAL DISTRICT COURT, THOOTHUKUDI

Present:- Thiru. M.Thandavan, B.L.,
I Additional District Judge,
Thoothukudi

Wednesday, the 1st day of July 2026

O.S.No. 146/2021

CNR No.TNTT01- 004992 - 2021

P. Venkateshwaran

... Plaintiff

/Vs/

1. P. Murugesan

2. P. Saraswathi

3. S. Lakshmi

4. S. Shanthi

5. G. Usha (Died)

6. R. Gandhi

7. G. Rajeshkumar

8. G. Mugunthan

... Defendants

(D6 to D8 are the legal heirs of D5 impleaded as per order in I.A.No.2/2025 dated 18.11.2025 and amended as per order in I.A.No.3/2026 dated 17.03.2026)

This suit has been originally filed before the Principal District Court, Thoothukudi and made over to this court, and it came before this Court on 15.06.2026 for final hearing, in the presence of Thiru. T.J. Karthikeyan, Advocate for the Plaintiff, Thiru. S. Periyasamy, Advocate for the 1st defendant, Thiru. M.Krishnan, Advocate for the 4th defendant, D2 to D4 and D6 to D8 called absent set exparte,

D5 died and after hearing both side arguments and upon perusing available material records and having stood over for consideration till this day, this Court delivered the following...

J U D G M E N T

The plaintiff has filed this suit under Order 7 Rule 1 of Civil Procedure Code (i) for partitioning the plaintiff's $\frac{5}{6}$ th share in the 1st schedule property by metes and bounds and to deliver the allotted portion to him, (ii) partitioning the plaintiff's $\frac{1}{6}$ th share in the 2nd schedule property by metes and bounds and to deliver the allotted portion to him and for costs.

2) The averments of the amended plaint in short :-

The plaintiff, the defendants 1, 3 to 5 are the children of the 2nd defendant. The suit 1st and 2nd schedule properties originally belonged to one Pechimuthu Achari the husband of the 2nd defendant who died intestate on 30.08.2017 leaving both parties as his legal heirs. The other son of the said Pechimuthu Achari namely one Kannan died issueless. After the death of Pechimuthu Achari, both the parties to the suit have been in joint possession of the suit properties. The defendants 2 to 5 executed a settlement deed dated 24.07.2019 in favour of the plaintiff in respect of their undivided $\frac{4}{6}$ share in the suit properties. The same was acted upon and the plaintiff became entitled to $\frac{5}{6}$ share and the 1st defendant is entitled to $\frac{1}{6}$ share in the 1st schedule property. The plaintiff and the defendants are entitled to $\frac{1}{6}$

share each in the 2nd schedule property and all the parties are in joint possession of the same. In April 2021, the 1st defendant started acting adverse to the plaintiff questioning the validity of the above settlement deed. Therefore the plaintiff demanded partition in respect of the suit properties. Except the 1st defendant, the other defendants conceded. Hence the plaintiff issued a legal notice to the 1st defendant on 06.09.2021 wherein the 2nd schedule property was omitted inadvertently. Therefore the plaintiff has filed this suit for partition in respect of his 5/6 share in the 1st schedule property and in respect of his 1/6 share in the 2nd schedule property and therefore the plaintiff has requested to decree the suit as prayed for.

3) The averments of the written statement by the 1st defendant in short :-

The relationship between the parties is admitted. The above settlement deed by the defendants 2 to 5 in favour of the plaintiff has been denied. The defendants 3 to 5 have got no share in the suit properties. Therefore the above settlement deed is not valid. The said Pechimuthu Achari executed a gift deed in respect of the old door No.4, New door No.15 in Eral Town Panchayat in Natham S.No.301/14 with an extent of 0.00.56 hectare in favour of the defendants 3 to 5 towards their share. Therefore the defendants 3 to 5 have got no share in the suit properties. The above gift deed has been suppressed and the plaintiff and the

defendants 2 to 5 colluded together and created the settlement deed dated 24.07.2019. The said Kannan died 23 years ago. But after his death, the above settlement deed has been executed as if the parties to the suit are having 1/7 share each. There is a vacant site belonging to the said Pechimuthu which is undivided. There is a house in Mullakadu belonging to Pechimuthu which is undivided. Therefore this suit is bad for partial partition. The other averments in the plaint have been denied by the 1st defendant and therefore the 1st defendant have requested to dismiss the suit with costs.

4) The following issues are framed on the basis of the pleadings in the plaint and written statement:-

1. Whether the plaintiff is entitled to the relief of partition ?
2. What relief the plaintiff is entitled to?

5) For the purpose of proper adjudication, the following additional issue has been framed on the basis of the pleadings. Since the evidence and the arguments on the basis of the pleadings have already been put forth on both sides, there is no necessity to both parties to adduce same evidence and put forth same argument again.

1. Whether the defendants 2 to 5 had authority to execute the settlement deed dated 24.07.2019 ?
2. Whether the suit is bad for partial partition ?

6) On side of the plaintiff, the PW.1 and PW2 were examined and Ex.A1 to Ex.A10 have been marked. On the side of the defendant, DW1 was examined and Ex.B1 has been marked.

7) Additional Issue No.1:-

The case of the plaintiff is that the plaintiff, the 1st defendant and the defendants 3 to 5 are the children of the 2nd defendant. The case of the plaintiff is further that the father of the plaintiff was one Pechimuthu Achari became entitled to the 1st schedule properties under the Ex.A1 sale deed and he became entitled to the 2nd schedule property under the Ex.A2 sale deed. The above aspects are admitted by the 1st defendant also. The defendants 2 to 5 have been set exparte in the suit. Admittedly the said Pechimuthu Achari died on 30.08.2017. Therefore the case of the plaintiff is that all the parties to the suit being the legal heirs of the said Pechimuthu Achari became entitled to 1/6 share each in the suit properties and the defendants 2 to 5 executed the Ex.A8 settlement deed in respect of their 4/6 share in the 1st schedule properties and therefore the plaintiff has become entitled to 5/6 share in the 1st schedule properties and the plaintiff and the defendants have got 1/6 share each in the 2nd schedule property.

8) The case of the 1st defendant is that the father of the 1st defendant executed a gift deed in favour of the defendants 3 to 5 in respect of 0.00.56 hectares in S.No.301/14 in Eral Town Panchayat towards their share and therefore the defendants

3 to 5 have got no share in the suit properties. Therefore the case of the 1st defendant is that the Ex.A8 settlement deed has been created by the plaintiff in collusion with the defendants 2 to 5 to grab the properties of the 1st defendant. It is also the case of the 1st defendant that the Ex.A8 settlement deed contains a recitals that the property has to be divided into 7 shares namely including the shares of the said Kannan also who died 23 years ago. Admittedly the said Kannan died long prior to the execution of the Ex.A8 settlement deed. Hence it is held that the plaintiff, defendants alone are the legal heirs of the said Pechimuthu Achari on the date of the execution of the Ex.A8.

9) The case of the 1st defendant is that the father of the 1st defendant gifted the above property in Eral Town Panchayat in favour of the defendants 3 to 5 as per the Ex.B1 settlement deed marked through the cross examination of the PW1. Therefore the Ex.B1 settlement deed in favour of the defendants 3 to 5 by the father is admitted by the PW1. It can not be held that the defendants 3 to 5 have got no share in the suit properties just because the Ex.B1 settlement deed has been executed in favour of them. Admittedly the defendants 3 to 5 have not relinquished their shares in the suit properties in favour of any other party. Hence naturally the defendants 3 to 5 had got 1/6 share each in the suit properties on the date of execution of the Ex.A8 settlement deed in favour of the plaintiff. Therefore it is evident that the defendants 2 to 5 have settled their undivided 1/6 share each in favour of the plaintiff under the Ex.A8.

Hence it is held that the defendants 3 to 5 have got authority to execute the Ex.A8 settlement deed along with the 2nd defendant in favour of the plaintiff in respect of their 1/6 share each in the 1st schedule properties and thus the additional issue No.1 is hereby answered.

10) Additional issue No.2 :-

The case of the 1st defendant is that the said Pechimuthu Achari had properties in Maranthalai village and Mullakadu Village. Since the above properties stand undivided, the suit is bad for partial partition. But the 1st defendant has not specifically described the above properties in the written statement. Therefore the survey numbers, extent, door number of the house are unknown to the Court. Unless the above properties are specifically described in the written statement, this Court can not suo moto hold that those properties are also available to the family as undivided. But during the cross examination of the DW1, the DW1 has deposed as, "தாவா சொத்துக்கள் ஆதியில் என் தகப்பனார் பேச்சிமுத்து ஆச்சாரிக்கு பாத்தியப்பட்டது. அவர் இறக்கும்போது தாவா சொத்துக்கள் தவிர வேறு சொத்துக்கள் இல்லை." Therefore there is clear admission on the part of the DW1 himself that there were no more properties other than the suit properties available to the family at the time of the death of the father.

11) Subsequently the DW1 has changed his character and deposed as, "எதிர்வழக்குரையிலும், நிரூபண வாக்குமூலத்திலும் மரந்தலை மற்றும் முள்ளக்காடு கிராமங்களில் என் தகப்பனாருக்கு வேறு சொத்துக்கள் இருப்பதாக நான் சொல்வது தவறு என்றால் சொத்துக்கள் உள்ளது, ஆனால் எனக்கு தெரியாது." When the 1st defendant is certain during evidence that there was no more properties to the father other than the suit properties on the date of his death, the evasive evidence that the DW1 does not know about the existence of the other properties can simply be ignored. Therefore it is held that the suit is not bad for partial partition and thus the additional issue No.2 is hereby answered.

12) Issue No.1 and 2 :-

In view of the findings given to the additional issue No.1 and 2, this Court holds that the plaintiff is entitled to the relief of partition as prayed for and the plaintiff is not entitled to any other relief and thus the issue No.1 and 2 are hereby answered.

In the result, the preliminary decree is hereby passed without costs to divide the 1st schedule properties into 6 equal shares and allot 5 such shares to the plaintiff and to divide the 2nd schedule property into 6 equal shares and allot one such share to the plaintiff.

Dictated to the Steno-Typist, directly typed by her in the computer, corrected and pronounced by me in the open Court this the 1st day of July 2026.

I Additional District Judge,
Thoothukudi.

List of plaintiff's side witnesses :-

PW.1 Tr. Venkateshwaran (Plaintiff)

PW.2 Tr. Lakshmanaperumal

List of Plaintiff's side documents :-

Ex.A1	10.07.1967	Sale deed in favour of Pechimuthu Asari in respect of 1 st schedule property
Ex.A2	18.06.2019	Natham patta in the name of Petchimuthu Asari in respect of 1 st schedule 1 st item property
Ex.A3	18.06.2019	Natham patta in the name of Petchimuthu Asari in respect of 1 st schedule 2 nd and 3 rd item properties
Ex.A4	25.09.2019	Sale deed in favour of Pechimuthu Asari in respect of 2 nd schedule property
Ex.A5 series	--	Tax receipts in the name of Pechimuthu Asari(7 in Nos.)
Ex.A6	05.10.2017	Death certificate of Pechimuthu
Ex.A7	23.11.2017	Legal heirs certificate of Pechimuthu
Ex.A8	24.07.2019	Settlement deed executed by the defendants 2 to 5 in favour of the plaintiff
Ex.A9	06.09.2021	Legal notice sent by the plaintiff to the 1 st defendant along with original postal receipt
Ex.A10	--	Acknowledgment card

List of defendants' side witness :-

DW.1 Tr. Murugesan

List of defendants' side document :

Ex.B1	03.08.2015	Copy of gift deed executed by the Pechimuthu Asari
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I Additional District Judge,
Thoothukudi.

I Additional District Court,
Thoothukudi.

O.S.No.146/2021

Draft/ Fair Judgment

Date : 01.07.2026.