

IN THE COURT OF THE SUBORDINATE JUDGE, SRIVAIKUNDAM.

Present : Thiru. K. Nambirajan, B.A.,B.L.,

Subordinate Judge,

Thursday the 24th day of April 2025

O.S.No.453/2023

(CNR.No.TNTT19 - 002525 - 2023)

1. Mariappan

2. S, Brahmsakthi

3. S. Janaki

...Plaintiffs

/Vs/

P. Nellaiappan

... Defendant

This case came before this Court for the final hearing on 24.04.2025 and Advocate Tr. S. Ananthasubramanian appeared for the Plaintiffs, and defendant called absent set exparte, and plaintiffs side argument heard, and on perusal of records and having stood over for consideration till this date and this Court delivers the following:-

JUDGMENT

The plaintiffs has filed this suit under Order VII Rule 1 of the Civil Procedure Code for seeking the relief of partition by metes and bounds and possession of plaintiff 2/3 share in the suit schedule property and for cost.

Plaintiff's case:-

1. The plaintiffs have approached this Court seeking the relief of partition and separate possession in respect of the properties described in the schedule to the plaint, asserting their lawful entitlement to a 2/3rd undivided share therein. According to the plaintiffs, the suit properties are joint family properties, belonging to the plaintiffs and the defendant collectively, and were never partitioned at any point in time. It is the case of the plaintiffs that items 1 and 2 of the suit schedule originally belonged to one Pandaram, who is the father of the first plaintiff and the defendant. The plaintiffs contend that these properties were held by Pandaram in his capacity as Karta of the joint Hindu family and that they have since continued to remain in joint possession. The third item in the schedule, the plaintiffs submit, was acquired jointly by the first plaintiff, one Shunmuganathan, and the defendant. The said purchase, they claim, was made using funds of the joint family and was intended to benefit the members of the family as a whole. The said Pandaram is stated to have died intestate on 23.09.2006, leaving behind his legal heirs. His wife, Madathi Ammal, predeceased him, having passed away on 03.04.1985. Pandaram and Madathi Ammal had a son named Shunmuganathan, who, in turn, was married and had two children—plaintiffs 2 and 3 herein. The plaintiffs aver that Shunmuganathan also died intestate, on 25.08.2012, without executing any testamentary disposition, and leaving behind his children, plaintiffs 2 and 3, as

his lawful heirs. In light of the foregoing, the plaintiffs contend that the properties in question have devolved jointly upon themselves and the defendant. They assert that they are entitled to a collective two-thirds share in the suit schedule properties, with the remaining one-third accruing to the defendant. They further submit that, with the intent of securing an amicable division of the properties, the family elders attempted to bring about a partition on 14.10.2017. However, despite these efforts, the defendant has persistently refused to cooperate, thereby frustrating the process and causing unwarranted delay. The plaintiffs further state that several oral requests were made to the defendant, both in person and through intermediaries, urging him to consent to an equitable partition. Despite such efforts, the defendant remained adamant and continued to offer evasive and untenable excuses. Consequently, the plaintiffs claim to have been left with no alternative remedy except to institute the present suit. Accordingly, the plaintiffs pray that this Court be pleased to declare their 2/3rd share in the suit schedule properties and grant a decree for partition and separate possession of the same by metes and bounds.

2. The defendant was set exparte even before filing of the written statement.
3. Upon the defendant being set down ex parte, the plaintiffs have proceeded to substantiate their claim by leading oral and documentary evidence. The first plaintiff entered the witness box and tendered her chief-examination through an affidavit, which has been taken on record. She has been examined as PW1.

In support of the plaintiffs' case, seven documents have been marked and exhibited as Ex.A1 to Ex.A7. These documents have been scrutinized by this Court for their evidentiary value, relevance, and admissibility in light of the pleadings and the legal principles applicable to suits for partition among coparceners of a joint Hindu family.

4. The first and most crucial document, Ex.A1, is the legal heirship certificate issued by the competent authority. This document categorically reflects that the first plaintiff, one Shanmuganathan, and the defendant are all lineal descendants of the original owner, namely Pandaram. The certificate, which has not been disputed or countered by the defendant at any stage, establishes the essential foundational fact of the parties being members of the same joint Hindu family. Further, the affidavit of PW1 discloses that Shanmuganathan, now deceased, was the son of Pandaram and that plaintiffs 2 and 3 are the lawful heirs of the said Shanmuganathan. The assertion is neither rebutted nor discredited and stands accepted as uncontroverted evidence.

5. The documents exhibited as Ex.A2 to Ex.A4 are as follows:-

i. Ex.A2 - 14.07.1993 - Sale Deed executed by Sudalimuthu in favour of the

Pandaram - SRO Copy (Document No.983/1993)

ii. Ex.A3 - 09.05.2007 - Sale Deed in the name of 1st plaintiff, defendant and

Shunmuganathan -SRO Copy (Document No.1380/2007)

iii. Ex.A4 - Joint Patta in the name of 1st plaintiff, defendant and

Shunmuganathan - Patta No.1764

6. The documents marked as Ex.A2 to Ex.A4 are on careful perusal found to be relevant title and revenue records relating to the suit schedule properties. These documents affirm that the properties were either originally held by Pandaram or were subsequently acquired for the benefit of the joint family comprising the plaintiffs and the defendant. It is a settled principle of Hindu law that where properties are held in the name of a Karta or where joint acquisition is made from the nucleus of joint family funds, the presumption of joint family ownership arises unless the contrary is established. In the present case, no material has been placed by the defendant to dislodge such a presumption. Hence, the Court is inclined to hold that the suit properties are indeed joint family properties.
7. In addition to the above, the plaintiffs have also marked a legal notice issued to the defendant (Ex.A5) and the corresponding postal acknowledgment card evidencing due service (Ex.A6). These documents are crucial in establishing the plaintiffs' cause of action. The issuance of the legal notice serves as an unequivocal demand by the plaintiffs for partition and separate possession of their lawful share in the joint family properties. The postal acknowledgment card confirms that the defendant was duly served with the said notice. Despite receipt of such notice, the defendant failed to respond, and more importantly,

failed to enter appearance or file a written statement in the present suit. This conduct of the defendant is not only indicative of evasiveness but also amounts to an implied admission of the plaintiffs' claims.

8. The oral deposition of PW1, coupled with the unassailed documentary evidence, clearly demonstrates that the plaintiffs are the co-parceners and legal heirs of the joint family, and are, therefore, entitled to claim partition. The principles governing partition of joint Hindu family property provide that each co-parcener is entitled to a share equal to that of other co-parceners unless otherwise specified. The plaintiffs, being three in number and representing two branches of the family (first plaintiff and the legal heirs of Shanmuganathan), together constitute two-thirds of the entire co-parcenary, the remaining one-third being attributable to the defendant.
9. This Court also takes judicial notice of the fact that no material has been placed by the defendant to challenge the nature of the property, the legitimacy of the plaintiffs' claims, or their genealogical connection to the original owner. In the absence of any contrary pleadings or evidence, the entire case of the plaintiffs stands proved by the strength of their evidence.
10. Therefore, this Court holds that the plaintiffs have successfully established their right to claim partition and separate possession. The genealogical linkage has been proven through Ex.A1, the nature of the properties has been established through Ex.A2 to Ex.A4, and the legal basis for the institution of

the suit has been substantiated through Ex.A5 and Ex.A6. The plaintiffs are thus entitled to a declaration of their 2/3rd undivided share in the suit schedule properties and are entitled to have the same partitioned and allotted to them by metes and bounds.

In the end, the suit for partition of the Plaintiffs' 2/3 share in the suit properties is preliminarily decreed with costs as prayed for. Accordingly, Advocate Mr.E. Durai Kumar is hereby appointed as Advocate/Commissioner, who shall be paid a sum of Rs.5000/- by the Plaintiff side towards his remuneration. The Advocate/Commissioner shall after due notice to both parties visit the suit property along with the surveyor concerned and shall note down the physical features and measurements of the suit property and shall file a report thereon indicating the manner in which the suit property can be divided into three equal shares so that 2/3 of it could be allotted to the plaintiff. Call on 12.06.2025 for reporting compliance on the payment of remuneration to the Advocate/Commissioner.

Directly dictated to the Steno - Typist and typed by him in the computer, corrected and pronounced by me, on this the 24th day of April 2025.

Subordinate Judge,
Srivaikundam.

Appendix

Plaintiff side witnesses:-

PW1 - Tr. Mariappan

plaintiffs side Documents:-

Ex.A1	18.04.2017	Legal Heir Certificate of Pandaram
Ex.A2	14.07.1993	Sale Deed executed by Sudalimuthu in favour of the Pandaram - SRO Copy (Document No.983/1993)
Ex.A3	09.05.2007	Sale Deed in the name of 1st plaintiff, defendant and Shunmuganathan -SRO Copy (Document No.1380/2007)
Ex.A4	---	Joint Patta in the name of 1st plaintiff, defendant and Shunmuganathan - Patta No.1764
Ex.A5	12.09.2023	Legal Notice - Office Copy
Ex.A6	14.09.2023	Acknowledgement Card
Ex.A7	---	House Tax Receipt, Vittilapuram Panchayat Valluvar Colony Door No. 3/121.

Defendants Side Witensses & Documents:- Nil

Subordinate Judge,
Srivaikundam.

Subordinate Court,
Srivaikundam.
O.S. No.453/2023
Draft/Fair Judgment
Date : 24.04.2025.

