

TNVR220000032016



TNVR220000042016



**IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE
ARUPPUKOTTAI**

Present : Thiru. M. VASANTHA KUMAR, M. L.,
Additional District Judge, Aruppukottai.

Tuesday, the 30th day of June, 2026

APPEAL SUIT No. 32/2016 and APPEAL SUIT No. 33/2016

CNR.No. TNVR220000032016 and TNVR220000042016

APPEAL SUIT No. 32/2016

CNR.No. TNVR220000032016

1. Mariyappan (Died) (*)

2. Bhagathal

*3. Thavamani

... Appellants/plaintiffs

//Vs//

1. Thangamari.

2. Thangamalar.

... Respondents/Defendants

(*) (As per the order in I.A. No. 05/2025 dated 06.12.2025, the 3rd appellant was impleaded as the legal heirs of deceased 1st appellant.)

(Amended as per the order in I.A. No. 06/2026 dated 29.01.2026)

This appeal is filed by the plaintiffs against the judgment and decree in O.S. No. 11/2005 of Subordinate Court, Aruppukottai, dated 03.06.2016.

The details about the parties before the Trial Court

Between :

1. Mariyappan
2. Bhagathal ... Plaintiffs.

/Vs/

1. Thangamari.
2. Thangamalar. ... Defendants .

APPEAL SUIT No. 33/2016

CNR.No. TNVR220000042016

1. Mariyappan (Died) (*)
2. Bagathal
3. Subathra Devi.
*4. Thavamani ... Appellants/Defendants

//Vs//

Thangamari. ... Respondent/plaintiff

(*) (As per the order in I.A. No. 04/2025 dated 06.12.2025, the 4th appellant was impleaded as the legal heir of deceased 1st appellant.)

(Amended as per the order in I.A. No. 05/2026 dated 29.01.2026)

This appeal is filed by the defendants against the judgment and decree in O.S. No. 02/2004 of Subordinate Court, Aruppukottai, dated 03.06.2016.

The details about the parties before the Trial Court

Between:

Thangamari ... Plaintiff.

/Vs/

1. Mariyappan
2. Bagathal

The appeal suit in A.S. No. 32/2016 was originally presented on 10.08.2016 and represented on 12.09.2016 before Hon'ble Principal District Judge, Virudhunagar District at Srivilliputtur and taken on file as A.S. No. 43/2016 on 17.11.2016 and made over to the Court of Additional District Judge, Virudhunagar on the same day as per the order of Hon'ble Principal District Judge, Srivilliputtur. Wherein, this case was renumbered as A.S. No. 32/2016 on 12.12.2016 and it was dismissed for default on 22.08.2022. After that, the appellants have filed a petition in I.A. No. 135/2022 to restore this appeal. During the pendency of that petition before Additional District Judge, Virudhunagar, on constitution of this court, this case was transferred to this court on 31.07.2024 as per the proceedings of Hon'ble Principal District Judge, Virudhunagar District at Srivilliputtur in D.No. 7001 dated 25.07.2024 and case records were received by this court on 29.08.2024 and proceeded the petition in I.A. No. 135/2022 and it was allowed on 17.09.2025 and then this appeal was restored on file on the same day and proceeded as A.S. No. 32/2016.

The appeal suit in A.S. No. 33/2016 was originally presented on 10.08.2016 and represented on 12.09.2016 before Hon'ble Principal District Judge, Virudhunagar District at Srivilliputtur and taken on file as A.S. No. 42/2016 on 17.11.2016 and made over to the Court of Additional District Judge, Virudhunagar on the same day as per the order of Hon'ble Principal District Judge, Srivilliputtur. Wherein, this case was renumbered as A.S. No. 33/2016 on 12.12.2016 and it was dismissed for default on 22.08.2022. Afterthat, the appellants have filed a petition in I.A. No. 136/2022 to restore this appeal. During the pendency of that petition before Additional District Judge, Virudhunagar, on constitution of this court, this case was transferred to

this court on 31.07.2024 as per the proceedings of Hon'ble Principal District Judge, Virudhunagar District at Srivilliputtur in D.No. 7001 dated 25.07.2024 and case records were received by this court on 29.08.2024 and proceeded the petition in I.A. No. 136/2022 and it was allowed on 17.09.2025 and then this appeal was restored on file on the same day and proceeded as A.S. No. 33/2016.

These appeal suits came up before me on 01.06.2026 for final hearing in the presence of Thiru. G. Mariappan, Learned Advocate for the Appellants and Thiru. S.V. Nagarajan, Learned Advocate for respondents and upon considering all material records in this case and hearing the arguments of both sides and having stood over for consideration till this day, this court delivered the following

COMMON JUDGMENT

APPEAL SUIT No. 32/2016

This appeal is preferred by the appellants/plaintiffs against the judgment and decree in O.S. No. 11/2005 of Subordinate Court, Aruppukottai, dated 03.06.2016

2. The suit in O.S. No. 11/2005 was filed by the plaintiffs for the relief of bare injunction restraining the defendants and their men from interfering with the peaceful enjoyment of the plaintiffs in the suit properties and for costs.

3. The brief averments of the plaint is as follows:

3.1 The 2nd plaintiff is the wife of 1st plaintiff. The 1st defendant is the younger brother of the 1st plaintiff. The 2nd defendant is the wife of 1st defendant. The 1st plaintiff's father namely Velu Thevar, died in the year 1987. The mother of the 1st plaintiff namely Aandichi died in the year 1983. In the year 1977 oral partition was effected among the 1st plaintiff, 1st defendant and their father in respect of common family properties and they are enjoyed their respective shares individually and patta also transferred in their names for their

respective shares. The 2nd to 9th item properties were allotted to 1st plaintiff and he is in exclusive possession and enjoyment of the same. Patta also issued in the name of 1st plaintiff for those properties and he is doing agriculture in the above properties. The 1st plaintiff has mortgaged the 2nd to 9th items of suit properties on 01.11.2000 to Kulanthaivel Thevar. On 20.04.2001, said Kulanthaivel Thevar has made over the mortgage to Muthukannu Thevar vide registered document. The 1st plaintiff has purchased the 1st item of suit property on 22.06.1994 vide registered sale deed and then on 18.08.2000 he executed a registered settlement deed in favour of his wife namely 2nd plaintiff and 2nd plaintiff has also accepted the settlement deed and transferred patta in her name and enjoying it by doing agriculture. The 10th item of suit property belongs to plaintiff vide registered sale deed dated 28.09.1979. The plaintiffs have been exclusively enjoying the suit properties beyond the statutory period.

3.2 The defendants have no right, title or enjoyment in the suit properties. For the past few months, the defendants have been demanding to sold the suit property to them in a low price, but the plaintiffs have refused. Therefore, on 13.05.2002, the defendants with the help of their henchmen, attempted to enter the suit property illegally. The plaintiffs tried hard to prevent it. The defendants are influenced and powerful persons. Hence this suit.

4. The brief averments of the written statement filed by the 1st defendant and adopted by 2nd defendant are as follows :

4.1 The plaintiffs are not entitled to any relief as they prayed for. Except the admitted facts, all other facts are denied as false. The relationship between the parties are all admitted as true. The allegations that the 1st plaintiff, the 1st defendant and their father were living as a joint family, orally partitioned the properties in the year 1977 and the items 2 to 9 of the suit properties were allotted to the share of the 1st plaintiff are all denied as false There was no such

oral partition, as alleged by the 1st plaintiff in the year 1977 and really if any such oral partition was effected, then their father Velu Thevar would have allotted a share. The plaintiffs are silent to state anything in this respect. Further the item Nos. 2 to 9 were purchased by Velu Thevar and were only the joint family properties. The half portion of items 4 to 7 of the suit properties were purchased by Velu Thevar in his name through the registered sale deed, on 08.05.1978 only. Regarding the 1st item of the suit property, a registered othi deed was effected, on 09.07.1992 in Document No. 1031/92 in favour of the 1st plaintiff. The said othi amount was paid only from the joint family funds. The 1st plaintiff has no separate income of his own. Then on 22.06.1994, by showing the aforesaid othi as a charge, the registered sale deed was effected in favour of the 1st plaintiff, because he was the kartha of the joint family. The said sale consideration was also paid from the joint family funds.

4.2 Then by taking advantage of the innocence of the 1st defendant, the 1st plaintiff had effected a registered gift deed, on 18.08.2000 in favour of his wife. The said gift deed never came into effect and it is only a sham and nominal document. The 10th item of the suit property was purchased in the name of the 1st plaintiff, on 28.09.1979, even when the Velu Thevar was alive, Regarding the 10th item of the suit property, the 1st plaintiff was only a name lender and was never an absolute owner. Hence, it is very clear that the items 1 and 10 of the suit properties are only the joint family properties and not the exclusive properties of the plaintiffs. Except this suit property there are some other properties including the residential houses in the suit village. Similarly there are several landed properties at Mela Uppligundu Village, Thirumangalam Taluk, Madurai District, belonged to the joint family properties. After the demise of their parents, the 1st plaintiff and the 1st defendant were living as a joint family and enjoyed their joint family properties, including the suit

properties.

4.3 Both the 1st plaintiff and 1st defendant had married the sisters of the same family. So the 1st defendant had completely trusted his brother. In the meanwhile the 1st plaintiff, taking advantage of the 1st defendant's innocence, had mutated the revenue records of the joint family properties in his name. Since he is the kartha of the family, the 1st defendant, upon good faith, had not taken the mutation of the revenue records seriously. Then in September, 1999, by seeing the indifferent attitude of the 1st plaintiff, as per the advise of the well wishers, a panchayat was convened. In the panchayat, Karuppaiah Thevar, S/o. Arunachala Thevar, Subramani, S/o. Kulanthaivel Thevar, Ramar, S/o. Sundara Thevar, Periyasamy, S/o. Manickam, had participated and advised to partition the family properties. The 1st plaintiff also agreed, but behaved differently. Hence the 1st defendant had filed several petitions before Superintendent of Police, Virudhunagar and the revenue authorities. After filing all those petitions, in the end of the year 1999, oral partition was effected regarding the family properties including the suit properties. According to the above partition, the plaintiff is enjoying half right in the suit properties. The plaintiff, on the basis of enjoyment, had availed crop loan in the Primary Agricultural Cooperative Bank, Aviyur and settled the loan. Hence it is clear that the 1st defendant is a co-owner in the suit properties. When the 1st defendant is a co-owner the question of adverse possession will never arise.

4.4 The allegation that on 13.05.2002, the 1st defendant had tried to disturb the plaintiffs' possession and enjoyment of the suit properties are all denied as false. As a co-owner the 1st defendant had no necessity to disturb the plaintiffs' possession. Since the 1st defendant is a co-owner, the question of granting any injunction will never arise. If the plaintiffs are having any exclusive right in the suit properties, then they should have filed a suit for

declaration and so the suit is not maintainable. The plaintiffs are legally estopped from claiming the prayer against the defendants. More over the 2nd defendant is an unnecessary party to this proceedings and so the suit is hit by mis joinder of parties. The suit is not properly valued and proper Court Fees are not paid. Hence prays to dismiss the suit.

5. On the above pleadings, the trial court framed the following issues:

- 1) Whether the plaintiffs are in exclusive possession and enjoyment of the suit properties ?
- 2) Whether the plaintiffs are entitled to get the relief of permanent injunction as prayed for ?
- 3) What are the other reliefs the plaintiffs are entitled to ?

Additional Issues framed on 15.02.2016

- 1) Whether this suit for permanent injunction, without the relief of declaration of title of the suit properties is maintainable ?

APPEAL SUIT No. 33/2016

6. This appeal is preferred by the appellants/defendants against the judgment and decree in O.S. No. 02/2004 of Subordinate Court, Aruppukottai, dated 03.06.2016

7. The suit in O.S. No.02/2004 was filed by the plaintiff with a prayer to pass a Preliminary decree for partition of 1/2 share in the suit properties and for costs.

8. The brief averments of the plaint is as follows:

8.1 The 1st defendant is the elder brother of the plaintiff. The 2nd defendant is the wife of the 1st defendant. The father of the plaintiff and the 1st defendant is Velu Thevar. Their mother is Andichi. Velu Thevar had purchased the suit properties by the income derived from the ancestral

properties. Velu Thevar, the 1st defendant and the plaintiff were living as joint family. Velu Thevar died in the year 1987. His wife had already predeceased. After the demise of Velu Thevar, the 1st defendant and the plaintiff were living as a joint family and are enjoying the suit properties as co-owner. The plaintiff is the illiterate person and fully relying upon the 1st defendant. Both had married the sisters of the same family. So, the plaintiff had completely trusted the 1st defendant.

8.2 The 10th item of suit property was purchased in the name of the 1st defendant on 28.09.1979 even then their father was alive. Regarding the 10th item, the 1st defendant is only a name lender and was not an absolute owner. Regarding the 1st item of property, a registered othi deed was effected on 09.07.1992 in document No. 1031/1992 in favour of the 1st defendant. Said othi amount was paid only from the joint family funds. The 1st defendant has no separate income. On 22.06.1994, by showing the above othi as a charge, the registered sale deed was effected in favour of the 1st defendant because he is the kartha of the joint family. The said sale consideration also paid from the joint family funds. Thereafter, by taking advantage of the plaintiff's innocence, the 1st defendant had effected a registered gift deed on 18.08.2000 in favour of his wife namely the 2nd defendant. The said gift deed never came into effect and it is only a sham and nominal documents and fraudulent in-nature. Thereafter, the 1st defendant, by taking advantage of the plaintiff's innocence, transferred the revenue records of the joint family properties in his name. Since he is the kartha of the family, the plaintiff upon good faith had not taken the transfer of revenue records seriously.

8.3 Then in September, 1999 by seeing the indifferent attitude of the 1st defendant, as per the advise of the well wishers, a panchayat was convened. In the panchayat, Karuppaiah Thevar, S/o Arunachala Thevar, Subramani,

S/oKulanthaivel Thevar, Ramar, S/o Sundara Thevar, Periyasamy, S/oManickam, had participated and advised to partition the family properties. The 1st defendant also agreed, but behaved differently. Hence the plaintiff had filed several petitions before Superintendent of Police, Virudhunagar and the revenue authorities. After filing all those petitions, in the end of the year 1999, oral partition was effected regarding the family properties including the suit properties. According to the above partition, the plaintiff is enjoying half right in the suit properties. The plaintiff on the basis of enjoyment, had availed crop loan in the Primary Agricultural Cooperative Bank, Aviyoor and settled the loan.

8.4 Meanwhile, the defendants had filed a suit in O.S. No. 124/2002 before District Munsif Court, Aruppukottai alleged that the 1st to 10th items of suit properties are the exclusive properties of them. The plaintiff also filed written statement in that suit. Hence, the plaintiff has filed the present suit for partition. In order to avoid any technical objections and to have a binding decree, entire family properties were included in the plaint. In the written statement filed by the 1st defendant it has been stated that he had sold out the 11th to 15th items to the 3rd defendant on 13.09.2001 through a registered sale deed. It was never bind the plaintiff. The plaintiff is having half right in the sold out properties and the 1st defendant has no right to sell the plaintiff's share. The 3rd defendant is legally estopped to claim right over the above properties regarding the plaintiff's share.

9. The brief averments of the written statement filed by the 1st defendant and adopted by 2nd defendant are as follows :

9.1 The Plaintiff, 1st defendant and their father had already partitioned the family properties and they are enjoying their shares independently. After the partition, the 1st defendant purchased several properties individually. The

avermment that the properties are common property is also fraudulent. The plaintiff is not entitled to the relief of partition. The averments that the father of the plaintiff and the 1st defendant namely Velu Thevar had purchased the suit properties by the income derived from the ancestral properties and Velu Thevar, the 1st defendant and the plaintiff were living as a joint family and after the demise of Velu Thevar, the 1st defendant and the plaintiff were living as a joint family and are enjoying the suit properties as common are all denied as false. The plaintiff, 1st defendant and their father had already orally partitioned the family properties in the year 1977. After that, the 1st defenant had purchased many properties from his own income. For purchasing and developing the above properties, the 1st defendant borrowed about Rs. 6,00,000/-. The plaintiff is well known the above fact and he did not object the same. Hence the suit is hit by estoppaland also hit by limitation.

9.2 The item Nos. 1, 10, 17, 18, 19, 20, 21, 25, 28, 29, 30 of the suit properties were purchased by the 1st defendant individually from his own money. The item Nos. 2 to 9 and 11 to 15 and 22, 23 of suit properties were allotted to the 1st defendant for his share. The 1st defendant had executed a settlement deed on 18.08.2000 in favour of 2nd defendant in respect of 1st item of suit property. Thereafter the 2nd defendant had exclusively enjoyed the 1st item of property by transferring the patta and EB connection. In respect of 11th to 15th items of suit properties, the 1st defendant executed a sale deed on 13.09.2001 in favour of Subathra Devi. Since said Subathra Devi was not added as a party in the suit, the suit is hit by non joinder of necessary parties. Since the plaintiff and his wife interfered with the enjoyment of the defendants in the 1st to 10th item of suit properties, the defendants had filed a suit in O.S. No. 124/2002 before Aruppukottai District Munsif Court and it is pending. In respect of 16th item of suit property, the eastern portion was allotted to the 1st

defendant and the western portion was allotted to the plaintiff and they are enjoying their respective share individually. In respect of 17th item of suit property, O.S. No. 238/98 was proceeded before District Munsif Court, Aruppukottai and decided in favour of 1st defendant. The 24th, 26th and 27th item of suit properties were allotted to the plaintiff and he is exclusively enjoying the same. The alleged common enjoyment is fraudulent one. The northern portion with an extent of 6 cents nanja land in Survey No. 13/18 in the Keela Uppilikundu village was allotted to the 1st defendant and the southern 6 cents were allotted to the plaintiff. But the above property is not included in the plaint.

9.3 The averments that the 10th item of suit property was not the individual property of the 1st defendant and it is a common family property is denied as false. Already, the 1st defendant lodged a complaint against the plaintiff and his father-in-law Bagavathi Thevar and case was proceeded in the Virudhunagar court as S.C. No. 167/2003 and in that case both were convicted. The averments that for the othi dated 09.07.1992 in respect of 1st item of property, the othi amount was paid from the common family and the sale deed dated 22.6.1994 was effected for the joint family and the 1st defendant is the kartha of the joint family and the settlement deed executed by the 1st defendant on 18.08.2000 is a sham and nominal document are all denied as false. The averments that by taking advantage of the plaintiff's innocence, the 1st defendant had transferred the patta in his name and in the year 1999, panchayat also took place and in that partition the 1st defendant agreed to partition the family properties and in the year 1999, oral partition was effected and in that partition half share in the suit properties were allotted to the plaintiff are all denied as false. Since the plaintiff and his wife interfered the enjoyment of the defendants, the defendants had filed the suit in O.S. No. 124/2002. Hence prays

to dismiss the suit.

10. The brief averments of the written statement filed by the 3rd defendant are as follows :

Already the family properties of 1st defendant were partitioned among the family of the plaintiff and 1st defendant and they are enjoying their respective shares individually. This suit is not maintainable as it was filed without seeking any relief in respect of the sale effected in favour of the 3rd defendant. The 3rd defendant is the bonafide purchaser. The 3rd defendant had purchased the 11th to 15th item of suit properties from 1st defendant and minor Thavamanion 13.09.2001 for good sale consideration and he is in exclusive enjoyment of the above properties. The plaintiff has also known the same very well, but he has not raise any objection. The 3rd defendant has transferred the patta in his name for the above purchased properties. The plaintiff never enjoying the above properties jointly. Since the plaintiff has agreed the enjoyment of the 3rd defendant, the suit is hit by estoppel. The averment that the plaintiff is having share in the above purchased properties is denied as false. The plaintiff has no share in the above properties. The 3rd defendant is the bonafide purchaser and hence prays to dismiss the suit.

11. On the above pleadings, the trial court framed the following issues:

- 1) Whether the suit properties are the common family property?
- 2) Whether partition was effected between the parties in the year 1977?
- 3) Whether the suit is bad for non joinder of necessary parties?
- 4) Whether the plaintiff is entitled to share as prayed for?
- 5) What are the other reliefs the plaintiffs are entitled to?

Additional Issues framed on 20.06.2006

- 1) Whether the sale obtained by the 3rd defendant on 13.09.2001 with

respect of item Nos. 11 to 15 is binding on the plaintiff?

Additional Issues framed on 15.02.2016

- 1) Whether the suit is bad for non joinder of necessary parties as the daughters of the Velu Thevar namely Seeniyammal and Paranjothi are not added as a party in the suit?

12. Before the trial court, O.S. No. 02/2004 and O.S. No. 11/2005 were tried together and the witnesses were examined in O.S. No. 02/2004. On the side of plaintiff in O.S. No. 02/2004, P.W. 1 and P.W. 2 were examined and Ex. A-1 to Ex. A-18 were marked. On the side of defendants in O.S. No. 02/2004, D.W. 1 was examined and Ex. B-1 to Ex. B-64 were marked.

13. After hearing, the trial court had passed a common judgment In O.S. No. 2/2004 and O.S. No. 11/2005 and dismissed the suit in O.S. No. 11/2005 thereby rejecting the claim of Permanent Injunction in O.S. No. 11/2005 and allowed the suit in O.S. No. 2/2004 and granted the relief of Partition of 1/2 share of the plaintiff in O.S. No. 2/2004. Aggrieved over the Judgment of Trial Court in O.S. No. 11/2005, the plaintiffs in O.S. No. 11/2005 who are the defendants in O.S. No. 2/2004 had preferred this Appeal. In the lower Court Judgment, the parties are referred as per the ranking in O.S. No. 2/2004. For the sake of convenience, the parties are referred herein as per the ranking in O.S. No. 2/2004 before the trial court.

14. The brief averments of the appeal memorandum in A.S. No. 32/2016 and A.S. No. 33/2016 are as follows:

14.1 The trial court held in the judgment that in the partition held in the year 1977, it is not stated that which property was allotted to Velu Thevar. and on seeing that after 11 years, several properties were purchased in the name of Velu Thevar, it is not stated in the sale deed that how Velu thevar obtained the

income to purchase it and hence a judgment has been passed against the defendants. The trial court failed to consider the explanation given by D.W.1 in his evidence regarding the incorrect years stated in the Ex. B-20 sale deed. The trial court erroneously decided that at the time of oral partition held in the year 1977 the plaintiff is aged 16 years, then it was not stated that who was his guardian in the oral partition. The trial court wrongly considered the evidence of P.W. 2 regarding the oral partition held in the year 1999. The trial court failed to consider that since the plaintiff admitted the oral partition held in the year 1999, then the suit for partition is not maintainable. The trial court failed to consider that the plaintiff has not proved the suit properties are joint family properties. The trial court ought to have dismissed the suit for the reason that the plaintiff has not proved which property was allotted to whom. The trial court ought to have dismissed the suit for the reason that the sisters of the plaintiff and 1st defendant namely Seeniammal and Paranjothi were not added as a party in the suit. Since the husband of the Seeniammal namely P.W. 2 Bagavathi stated that he did not claim any right, he is a necessary party to this case and hence he has to be added in the suit. Since, the 3rd defendant had purchased the 11th to 15th items for good sale consideration, it is necessary to seek the declaratory relief that the above sale deed has to be cancelled. The trial court failed to note that since the 1st defendant had purchased the item Nos. 11 to 15 from his own money, he has every right to sell the above properties.

14.2 The 1st defendant had purchased the suit 1st to 10th items of properties from his own money and transferred the patta in his name and enjoying the same by paying kist. Hence the 1st defendant is entitled to the relief of permanent injunction as prayed for in O.S. No. 11/2005. The 2nd to 9th items of suit properties were already allotted to the 1st defendant in the year 1977, it is not necessary to seek the relief of declaration. Hence the trial court

ought to have allowed the suit in O.S. No. 11/2005. Since the plaintiff admitted that already oral partition was effected, this suit is not properly valued and proper Court Fees are not paid. The 1st appellant died on 24.12.2022. The wife of the 1st appellant is already arrayed as 2nd appellant. The another heir namely Thavamani was impleaded as 4th appellant in this appeal.

15. The points for Determination in this case are:

- i. Whether the finding of the Trial court that the suit is not hit by non joinder of necessary party is valid one or not ?
- ii. Whether the contention of the Appellant that the trial court had not followed the directions given by the Appellate Court in its earlier remand order ?
- iii. Whether the trial court has failed to appreciate that the properties of the Elder brother Mariyappan are not individually belongs to him ?
- iv. Whether the trial court is correct in holding that the suit for injunction without the relief of declaration of title to the suit property is not maintainable ?
- v. Whether this appeal is allowed or not ?

16. Discussion on Points (i) to (v) :

The appeal in A.S. No. 32/2016 was filed by the plaintiffs, who had filed a suit for permanent injunction in O.S. No. 11/2005, which was dismissed by the trial court. The appeal in A.S. No. 33/2016 was filed by the defendants, who have suffered with the decree in a suit for partition filed by the plaintiffs in O.S. No. 02/2004, which was decreed by the trial court.

17. According to the plaintiffs, the 1st plaintiff in O.S. No. 11/2005 namely Mariyappan and the 1st defendant in O.S. No. 11/2005 namely Thangamari are brothers and they were born to Velu Thevar and Aandichi. The 2nd plaintiff in O.S. No.11/2005 namely Bhagathal is the wife of 1st plaintiff.

Likewise the 2nd defendant in O.S. No. 11/2005 namely Thangamalar is the wife of 1st defendant. Originally the injunction suit was filed before the District Munsif Court, Aruppukottai as O.S. No. 124/2002. The injunction suit was filed at the earliest point of time by Mariyappan (Elder Brother) and his wife Bhagathal as against the 1st plaintiff's brother namely Thangamari (Younger Brother) and his wife Thangamalar. Pending suit in the year 2004, the younger brother namely Thangamari had filed a suit for partition in O.S. No. 2/2004 as against his elder brother Mariyappan as 1st defendant and his wife Bhagathal as 2nd defendant and the purchaser from the 1st defendant Mariyappan namely Subathradevi as 3rd defendant. In the earlier suit in O.S. No. 11/2005 previously O.S. No. 124/2002 only 10 items of properties were shown as suit property. Whereas in the subsequent partition suit in O.S. No. 2/2004 totally 32 items have been shown as suit property. Thereafter based on the transfer application filed by the respective parties, the above injunction suit has been transferred from the District Munsif Court, Aruppukottai to Subordinate court, Aruppukottai and renumbered as O.S. No. 11/2005 (previous O.S. No. 124/2002) and both the injunction suit in O.S. No. 11/2005 and the partition suit in O.S. No. 02/2004 have been tried together and common judgment has been pronounced by the trial court.

18. The case of the plaintiff in O.S. No. 2/2004, which is filed for the relief of partition, is that he is the younger brother and the 1st defendant Mariyappan is the elder brother and they are born to Velu Thevar and Aandichi. The suit properties namely 32 items, some of the properties are the ancestral properties and the other properties were purchased from the joint family income during the life time of their father Velu Thevar. Plaintiff, 1st defendant and their father Velu Thevar had constituted a joint family and after the demise of their father, the plaintiff and the 1st defendant along with their mother had constituted

a joint family. It is the further case of the plaintiff in O.S. No. 02/2004 that the 10th item of suit property was purchased in the name of the 1st defendant on 28.09.1979 during the life time of their father and their father was died only in the year 1987. Regarding the 1st item of suit property, a registered othi deed was effected on 09.07.1992 in the name of the 1st defendant as in the capacity of Kartha of the joint family and said othi amount was paid only from the joint family funds and on 22.06.1994, by showing the above othi as a charge, registered sale deed was effected in favour of the 1st defendant as in the capacity of kartha of the joint family and the said sale consideration also paid from the joint family funds. While so, the 1st defendant had executed a registered gift deed in favour of his wife namely the 2nd defendant Bhagathal on 18.08.2000. Thereby the 1st defendant conveyed the 1st item of suit property to his wife and gifted the same. The above gift deed is a sham and nominal document and the same was not binding on the plaintiff's right.

19. It is the further case of the plaintiff that the 1st defendant had also alienated the 11th to 15th items of suit property to the 3rd defendant on 13.09.2001 by way of registered sale deed and the said sale deed is a sham and nominal document and not binding on the plaintiff's right and title over the above items of suit properties. The 1st defendant has no separate income and does not have any capacity to purchase the properties individually in his name and the properties were purchased only from and out of the joint family income. There was a village panchayat has been held between the plaintiff and 1st defendant and the family properties were divided equally and the plaintiff has enjoyed his half share in the suit properties and on that basis he has availed crop loan also. But to the contrary the 1st defendant has filed a suit for injunction as against 10 items of suit properties, which insist the plaintiff to file a suit for partition in order to give a quietus to the issue.

20. The case of the defendants in O.S. No. 2/2024 is that already partition was effected in the year 1977 and the parties were enjoyed their share including the suit properties. Subsequently the 1st defendant had purchased many properties from his own income. The properties in item Nos. 1, 10, 17 to 21, 25, 28 to 30 are the separate properties of the 1st defendant and the properties in item Nos. 2 to 9 and 11 to 15 and 22, 23 are the shares allotted to the 1st defendant in the family properties. Further the eastern portion of 16th item of suit property, was allotted to the 1st defendant and the western portion was allotted to the plaintiff and 17th item of suit property has become his property by a way of decree passed in O.S. No. 238/98 on the file of the District Munsif Court, Aruppukottai. The 24th, 26th and 27th item of suit properties were allotted to the plaintiff and he is exclusively enjoying the same. Further in the nanja land in Survey No. 13/18 at Keela Uppilikundu village to a total extent of 12 cents, the northern 6 cents were allotted to the 1st defendant and the southern 6 cents were allotted to the plaintiff. But the above said property was not included in the present suit for relief of partition. Further the plaintiff and the 1st defendant are brothers and they were married the sisters of the same family. Believing the close relationship with the 1st defendant the plaintiff had not taken in to consideration of the illegal activities taken by the 1st defendant in respect of mutation of the revenue records.

21. Originally O.S. No. 02/2004 has been decided by the trial court on 01.10.2007 and allowed the suit in favour of the plaintiff and passed preliminary decree for partition of plaintiff's 1/2 share in the suit properties. Aggrieved over the same the defendants 1 and 2 namely Mariyappan and Bhagathal has preferred an first appeal in A.S. No. 03/2015. Further O.S. No. 11/2005 has been dismissed by the trial court on 01.10.2007. Aggrieved over the same the plaintiffs namely Mariappan and Bhagathal has preferred a first

appeal in A.S. No. 02/2015. While deciding the first appeal, the first appellate court come to the conclusion that even though the plaintiff and the 1st defendant had got two sisters namely Seeniammal and Paranjothi, they have not impleaded them as parties in the partition suit and without impleading the co-sharers, the suit for partition is not maintainable. Accordingly, the first appellate court allowed the appeal in A.S. No. 02/2015 and A.S. No. 03/2015 and thereby remanded the suit in O.S. No. 02/2004 to the trial court with a direction to frame additional issues and to take steps to implead the female heirs of deceased Velu Thevar namely Seeniammal and Paranjothi. In respect of other suit in O.S. No. 11/2005 which is filed for the relief of permanent injunction, the first appellate court had remanded the suit to the trial court with a direction to frame additional issues with regard to the fact that whether the suit for permanent injunction is maintainable or not without seeking the relief of declaration of title. Thereafter the trial court had framed the additional issues as directed by the first appellate court in the relevant suits and thereby allowed the partition suit in O.S. No. 02/2004 and dismissed the injunction suit in O.S. No. 11/2005. As against the above judgment, the present appeal in A.S. No. 32/2016 and A.S. No. 33/2016 have been filed.

22. In this appeal, it is pertinent to note that neither the plaintiff nor the 1st defendant has not taken any steps to implead the female heirs of deceased Velu Thevar, namely Seeniammal and Paranjothi. It is the specific case of the plaintiff that Hindu Succession (Amendment) Act 2005 will not applicable to the case in hand and the TamilNadu Act No. 1/1990 will govern the case in hand even on the date of remand. It is the further case of the plaintiff that the female heirs are already given sufficient sridhana articles and they are relinquished their share in the family properties. The counsel for the plaintiff had relied upon the evidence of P.W. 2 Bhagavathi Thevar, who is the husband

of Seeniammal namely the female heir of deceased Velu Thevar, had stated that his wife will not claim any share in the family properties and she has been already provided with the Sridhana articles and other things and thereby she had relinquished her share in the suit properties. Likewise her sister also provided with necessary stridhana articles, thereby she does not have any claim over the suit properties. Relying upon the above evidence of P.W. 2, the trial court had come to the conclusion that the suit is not bad for non joinder of necessary party.

23. This court, during the course of argument, had put forward a specific question to the counsel for the plaintiff why the female heirs of Velu Thevar namely Seeniammal and Paranjothi were not impleaded in the suit, for which the counsel for the plaintiff replied that the female heirs are already got married prior to 25.03.1989 and they will not come under the category of coparceners in view of the TamilNadu Act No. 1/1990 will be applicable to the case in hand even on the date of remand and contended that the trial court had rightly allowed the suit for partition. On the other hand, the counsel for the 1st defendant contended that the trial court had not followed the the orders of the appellate court and there is a specific direction to implead the female heirs of deceased Velu Thevar, but the trial court had not taken any steps to implead the female heirs of Velu Thevar namely Seeniammal and Paranjothi. This court feels that even though the counsel for the 1st defendant contended that the trial court has not taken any steps to implead the daughters of Velu Thevar namely Seeniammal and Paranjothi, but absolutely there was no action taken on the part of the 1st defendant at all to disclose the name, address and other connected details of the daughters of Velu Thevar to the trial court. After framing an additional issue, before the trial court, no further evidence has been let in by both sides. This court by perusing the records it found that it is the specific

case of the plaintiff that the properties were not partitioned and hence the younger brother Mr. Thangamari had filed a suit for partition in O.S. No. 02/2004 stating that the 1st defendant Mr. Mariyappan (Elder brother) is only a Kartha of the family and the properties, which were stands in his name, were not absolutely belongs to him and they were purchased only from the joint family income and othi amount has also been given from the joint family funds and it is categorically stated that the suit properties were not partitioned by metes and bounds between the legal heirs of the deceased Velu Thevar.

24. For a better and proper understanding, it is just and necessary to extract Section 6 of Hindu Succession Act, (Amendment) 2005 which reads as follows:

6. Devolution of interest in coparcenary property.—(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005), in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,—

(a) by birth become a coparcener in her own right the same manner as the son;

(b) have the same rights in the coparcenary property as she would have had if she had been a son;

(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son,

and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:

Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

(2) Any property to which a female Hindu becomes entitled by virtue

of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force, as property capable of being disposed of by her by testamentary disposition.

(3) Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and,—

(a) the daughter is allotted the same share as is allotted to a son;

(b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and

(c) the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.

Explanation.—For the purposes of this sub-section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

(4) After the commencement of the Hindu Succession (Amendment) Act, 2005, no court shall recognise any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father,

grandfather or great-grandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt:

Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005, nothing contained in this sub-section shall affect—

(a) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be; or

(b) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act, 2005 had not been enacted.

Explanation.—For the purposes of clause (a), the expression “son”, “grandson” or “great-grandson” shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005).

(5) Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004

Explanation.—For the purposes of this section “partition” means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 or partition effected by a decree of a court.

Further as per Section 6 of Hindu Succession (Amendment) Act 2005, it is a settled proposition that female daughters are also co-parceners. The only exemption laid in the above provision is that within the cut off date namely on

or before 20.12.2004 if partition was took place in writing by way of a registered instrument or by a decree of court then it cannot be reopened. The defence raised by the 1st defendant namely Mr. Mariyappan (Elder brother) is that already in the year 1977 oral partition was effected between the brothers namely the 1st plaintiff and 1st defendant. The same was vehemently opposed by the 1st plaintiff Mr. Thangamari (Younger brother). To the contrary, the plaintiff pleads that in the year 1999 a meeting was took place in the presence of Karuppaiah Thevar, S/o. Arunachala Thevar, Subramani, S/o. Kulanthaivel Thevar, Ramar, S/o. Sundara Thevar, Periyasamy, S/o. Manickam and in which, it was decided to partition the properties between the brothers. But the 1st defendant was not come forward to act upon the said partition. Hence in order to give a quietus to the issue only, the plaintiff had filed the present suit for partition. Even though the 1st defendant contended that already partition was effected in the year 1977 and he has purchased other properties in his individual capacity and no contribution was given from the joint family income and such properties were absolutely belongs to him and they will come under the category of self acquired properties of the 1st defendant. But the 1st defendant has not taken any steps to prove the factum of oral partition, which was alleged to be took place in the year 1977. No witnesses were examined to prove the factum of oral partition.

25. Further, the first appellate court in the earlier round of litigation had allowed the first appeal in A.S. No. 2/2015 and A.S. No. 3/2015 and remanded the suit in O.S. No. 11/2005 and O.S. No. 2/2004 to the trial court with a direction to frame additional issues with regard to the fact that without seeking the relief of declaration of title to the suit properties, the suit for permanent injunction is maintainable or not. Thereby an additional issue has been framed by the trial court. The specific stand taken by the defendants in O.S. No.

11/2005 is that without seeking the relief of declaration, the suit for permanent injunction is not maintainable. The defendants in O.S. No. 11/2005 had denied the title of the plaintiff and since there is a cloud over the title of the plaintiff, it is the duty cast upon the plaintiff to prove his title over the suit properties by seeking declaratory relief. But the plaintiffs in O.S. No. 11/2005 has not taken any steps to amend the plaint. Even though additional issue has been framed, the plaintiff in O.S. No. 11/2005 has not come forward to adduce any evidence to prove that without the declaratory relief, he is not entitled for a relief of permanent injunction.

26. Further it is argued on the side of the defendants in O.S. No. 2/2004 that the trial court had not obeyed the order of the first appellate court and thereby disobeyed the direction given to the trial court to implead the female heirs of deceased Velu Thevar namely Seeniammal and Paranjothi. As per the judgment of Hon'ble Supreme Court of India in **Vineeta Sharma Vs. Rakesh Sharma and others reported in 2020 (3) MWN (Civil) 73**, it has been held as follows :

The provisions contained in substituted Section 6 of the Hindu Succession Act, 1956 confer status of Coparcener on the daughter born before or after Amendment in the same manner as son with same rights and liabilities.

The rights can be claimed by the daughter born earlier with effect from 09.09.2005 with saving as provided in Section 6(1) as to the disposition or alienation, Partition or Testamentary disposition which had taken place before 20th day of December 2004.

Since the right in Coparcenary is by birth, it is not necessary that father Coparcener should be living as on 09.09.2005.

The Statutory fiction of Partition created by Proviso to Section 6 of

the Hindu Succession Act, 1956 as originally enacted did not bring about the actual Partition or disruption of Coparcenary. The fiction was only for the purpose of ascertaining share of deceased Coparcener when he was survived by a Female Heir, of Class-I as specified in the Schedule to the Act of 1956 or male relative of such female. The provisions of the substituted Section 6 are required to be given full effect. Notwithstanding that a Preliminary Decree has been passed the daughters are to be given share in Coparcenary equal to that of a son in pending proceedings for Final Decree or in an Appeal.

In view of the rigor of provision of Explanation to Section 6(5) of the Act of 1956, a plea of Oral Partition cannot be accepted as the Statutory recognised mode of partition effected by a Deed of Partition duly registered under the provisions of the Registration Act, 1908 or effected by the Decree of a Court. However, in exceptional cases where plea of Oral Partition is supported by Public documents and Partition is finally evinced in the same manner as if it had been effected by a Decree of a Court, it may be accepted. A plea of partition based on oral evidence alone cannot be accepted and to be rejected outrightly.

Hence this court feels that the amendment made to the Hindu Succession Act in the year 2005 will be applicable to the case in hand and the contention of the plaintiff in the suit in O.S. No. 11/2005 that the Tamilnadu Act No. 1/1990 will govern this case even on the date of remand order passed in A.S. No. 02/2015 and A.S. No. 3/2015 is no longer valid. Hence the contention of the plaintiff that the daughters of deceased Velu Thevar namely Seeniammal and Paranjothi had not got any share in the suit properties cannot be accepted.

27. Further this court has given an opportunity to both the parties to implead the daughters of deceased Velu Thevar namely Seeniammal and

Paranjothi by way of seeking clarification from the counsel for the plaintiff in O.S. No. 02/2004, for which the counsel for the plaintiff had vehemently contended that the female heirs are not necessary parties to the partition suit and not come forward to implead the daughters of the deceased Velu Thevan. Having given sufficient opportunities, this court sought a clarification with regard to implead the female heirs of deceased Velu Thevar. But the counsel for plaintiff had vehemently opposed the same.

28. Hence this court feels that both the plaintiff as well as the 1st defendant were not disclosed the details of their sisters. Moreover the sisters were not examined before this court either by way of an evidence on the side of the plaintiff to state that they have relinquished their rights since they have been provided with the stridhana articles. The argument advanced by the counsel for plaintiff that P.W. 2 has spoken about the relinquishment of rights of female heirs. This court is unable to sail along with the arguments advanced by the counsel for plaintiff for the reason that admittedly P.W. 2 – Mr. Bhagavathi Thevar is the husband of Seeniammal. He has spoken that his wife Smt. Seeniammal and her sister Paranjothi had relinquished their rights in the suit property since they have been already got married prior to the year 1989 and they have been provided with Stridhana articles. Admittedly on the date of giving evidence by P.W. 2 both the daughters of Velu Thevar namely Seeniammal and Paranjothi were alive. Absolutely there was no explanation offered by the plaintiff for non examination of the above two persons before the trial court in respect of the relinquishment plea taken by the plaintiff. Moreover P.W. 2 being a husband of one of the daughter of Velu Thevar namely Seeniammal is not competent to spoke about the relinquishment in respect of the other daughter of Velu Thevar namely Paranjothi. This court feels that as per the Judgment laid down by the Hon'ble Supreme Court in **Vineeta Sharma**

Vs. Rakesh Sharma and others reported in 2020 (3) MWN (Civil) 73 the daughters of Velu Thevar were also coparceners who are equally entitled to the estate of Velu Thevar. Hence, this court comes to the conclusion that the suit properties were not partitioned and without impleading the daughters of Velu Thevar namely Seeniamal and Paranjothi the suit for partition is not maintainable and it is hit by non joinder of necessary parties. Both the plaintiff and the 1st defendant had not come forward to disclose the details of the female heirs, hence this court has taken an adverse inference that both the plaintiff and the 1st defendant are hiding the female heirs on the pretext their share may be diminished if the female heirs are impleaded in the suit. Accordingly this court feels that the daughters of Velu Thevar are just and necessary parties to decide the issue in the suit. The partition suit is not maintainable on the ground that the female heirs of deceased Velu Thevar were not added as party to the suit. Accordingly this court come to the conclusion that the suit is bad for non joinder of necessary parties. Since the remand order was not complied by the trial court and the trial court had carried away the argument put forth by the counsel for the plaintiff, this court feels that the trial court had committed an error in decreeing the partition suit. Hence this court feels that the appeal in A.S. No. 33/2006 is liable to be allowed and the judgment and decree in O.S. No. 02/2004 is set aside.

29. Further, the defendants had not produced any document to prove that the suit property items 2 to 9 and 1 and 10 were all individually purchased by the 1st defendant. When the 1st defendant in O.S. No. 11/2005 has categorically denied the title of the plaintiff and it is his specific defence that out of the joint family nucleus only the above properties have been purchased in the name of 1st Plaintiff in O.S. No. 11/2005 namely Mr. Mariappan only as a Kartha of the family and taking advantage of the close relationship with the 1st

defendant, he had mutated the revenue records. Further it is a settled proposition that revenue records does not confer any title to the parties. When there was a serious dispute over the title of the property, then the party who claims title to the property has to necessarily sought for declaratory relief. In this case the plaintiff and the 1st defendant are brothers. Moreover a partition suit was also conducted between them in O.S. No. 2/2004. In such scenario coupled with the fact that the Appellate court while deciding the Earlier round of litigation namely First Appeal in A.S. No. 2/2015 had directed the trial court to frame a issue with regard to the declaratory relief, the plaintiff Mr. Mariappan has not chosen to come forward to amend the plaint and not sought for the declaratory relief. In the absence of the declaratory relief and there was a cloud over the title, this court feels that the suit for bare injunction without the relief of declaration is not maintainable. Accordingly this court feels that without seeking the relief of declaration, the suit for permanent injunction in O.S. No. 11/2005 is not maintainable. Accordingly the appeal in A.S. No. 32/2016 is liable to be dismissed.

30. **A.S. No. 32/2016**

In the result,

1. This appeal is dismissed.
2. The judgment and decree in O.S. No. 11/2005 of Subordinate Court, Aruppukottai, dated 03.06.2016 is confirmed.
3. The parties are directed to bear their own costs.

31. **A.S. No. 33/2016**

In the result,

1. This appeal is allowed.
2. The judgment and decree in O.S. No. 02/2004 of Subordinate Court, Aruppukottai, dated 03.06.2016 is set aside.

3. The original suit in O.S. No. 02/ 2004 is dismissed.
4. The parties are directed to bear their own costs.

Dictated by me to the steno-typist, transcribed and typed by her, corrected and pronounced by me in open court, on this the 30th day of June, 2026.

Additional District Judge,
Aruppukottai.

Copy to :

The learned Subordinate Judge, Aruppukottai.