



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24-04-2026

CORAM

THE HON'BLE MR.JUSTICE S. SOUNTHAR

**SA No. 257 of 2026 and
CMP No.10841 of 2026**

Mahadevan (Died)

1. Krishnan, S/o (Late) Uliyakavudar,
DevarNatham, Aasanoor Village,
Sathamangalam Taluk,
Erode District
2. Jogi, D/o (Late) Uliyakavudar,
DevarNatham, Aasanoor Village,
Sathamangalam Taluk,
Erode District
3. Bhelliraj Alias Bhelli, S/o (Late) Uliyakavudar,
DevarNatham, Aasanoor Village,
Sathamangalam Taluk,
Erode District
4. Baby, W/o Sundaram,
transposed as 9th respondent
as per the order dated 24.04.2026 made in
CMP No.10832 of 2026 in SA No.257 of 2026
D.No.128, DevarNatham,
Aasanoor Village,
Sathamangalam Taluk,
Erode District
5. Mohan , D/o Sundaram,
transposed as 10th respondent
as per the order dated 24.04.2026 made in
CMP No.10832 of 2026 in SA No.257 of 2026
D.No.128, DevarNatham,
Aasanoor Village,
Sathamangalam Taluk,
Erode District



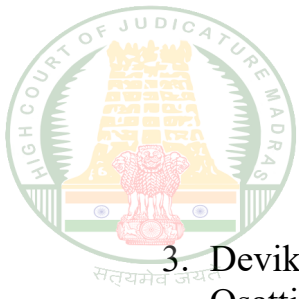
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6. Devi, W/o Late Mahadevan,
DevarNatham, Aasanoor Village,
Sathamangalam Taluk,
Erode District 638 401
7. Kannamma, W/o Kumar
SakkathaAravanu,
Kothagiri, Nilgiri District 643 201
8. Saraswathi Alias Akkammal
W/o Late Raju, D.NO.1/108, Hosakkari,
Aravanu, Kothagiri, Nilgiri District 643 201
9. Manimekalai, D/o Late Mahadevan,
DevarNatham, Aasanoor Village,
Harapalayam (Po), Sathamangalam Taluk,
Erode District 638 401
10. Easwaran, S/o Late Mahadevan,
DevarNatham, Aasanoor Village,
Sathamangalam Taluk,
Erode District 638 401
11. Chithra, S/o Late Mahadevan,
DevarNatham, Aasanoor Village,
Harapalayam, Sathamangalam Taluk,
Erode District 638 401
12. Anju, D/o Late Mahadevan,
DevarNatham, Aasanoor Village,
Sathamangalam Taluk,
Erode District 638 401.

..Appellant(s)

Vs

1. Krishnan, S/o Late Kullan,
DevarNatham, Aasanoor Village,
Sathamangalam Taluk,
Erode District 638 401
2. Suppi W/o Raju,
Osatti, Kizhikottagiri,
Nilgiri District



3. Devika, W/o Maadhan,
Osatti, Kizhikottagiri,
Nilgiri District
4. Shanti, W/o Mahalingam,
Kengarai, Kothagiri,
Nilgiri District
5. Radha, D/o Late Maadhan,
Osatti, Kizhikottagiri,
Nilgiri District
6. Raguram, S/o Late Maadhan,
Osatti, Kizhikottagiri,
Nilgiri District
7. Vijayadurai, S/o Late Kullan,
DevarNatham, Aasanoor Village,
Sathamangalam Taluk,
Erode District
8. Savithiri, W/o Mallesh, D/o Late Kullan,
DevarNatham, Aasanoor Village,
Sathamangalam Taluk,
Erode District.

..Respondent(s)

Prayer: Second Appeal filed under Section 100 of CPC to set aside the Judgement and decree dated 07.12.2021 in AS No.28 of 2018 on the file of the III Additional District and Sessions Judge, Erode at Gobichettipalayam reversing the Judgement and Decree dated 09.03.2017 in OS No.107 of 2014 on the file of Sub Court, Sathyamangalam with costs.

For Appellant(s):

Mr. R. Mubarak Basha



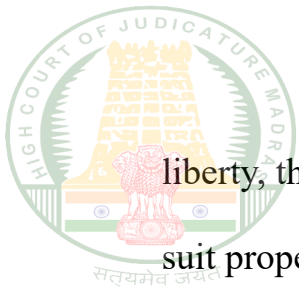
JUDGMENT

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The unsuccessful defendants are the appellants herein.

2. The respondents herein/plaintiffs filed a suit in O.S.No.107 of 2014 for partition seeking half share in the suit property. According to the plaintiffs, originally, the suit property belonged to their grand mother Gangi and one Lakshmi. The above said Gangi had a son called Kullan and the plaintiffs are legal heirs of the said Kullan. Therefore, the plaintiffs are claiming right over the suit property under Gangi. The above mentioned Lakshmi had a son called Ulian and the defendants are the legal heirs of the said Ulian. Therefore, the defendants are claiming right under the said Lakshmi.

3. It was stated in the plaint that originally Lakshmi and Gangi had 13.20 acres of land and out of total extent, 7.20 acres were sold in the year 1926. The remaining 6 acres of land has been in possession and enjoyment of them. It is also seen from the plaint averment that earlier, the plaintiffs through her family manager filed a suit in O.S.No.5 of 2006 on the file of District Munsif, Sathiyamangalam, Erode District seeking declaration of title and permanent injunction and the said suit was dismissed. The first appeal filed by him in A.S.No.42 of 2010 on the file of Sub Court, Sathiyamangalam was also dismissed, however, granted liberty to file a suit for partition. Based on the said



liberty, the present suit has been filed by the plaintiffs, claiming half share in the suit properties.

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4. The appellants/defendants filed a written statement, admitting the relationship pleaded by the plaintiffs in the plaint. It was the case of the appellants that, after sale of 7.20 acres of land referred in the plaint, the remaining 6 acres was not jointly enjoyed by Kullan and Uliyan. It was also stated by the defendants that they partitioned the suit property among themselves and based on the partition, revenue documents were also mutated in their favour. Further, the defendants specifically denied the plaint averment that liberty was granted to the plaintiffs to file a partition suit. Therefore, the defendants claiming exclusive right over the suit property, sought for dismissal of the suit.

5. Before the trial court, on the side of the plaintiffs, the first plaintiff was examined as PW1 and one Rangan was examined as PW2 and 12 documents were marked as Ex.B1 to Ex.B12. On the side of the defendants, the 4th defendant was examined as DW1 and one Sivayya was examined as DW2 and 13 documents were marked as Ex.B1 to Ex.B13.

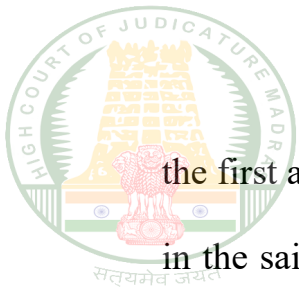
6. The trial court, on appreciation of oral and documentary evidence available on record, came to the conclusion that the plaintiffs were not entitled



to a decree for partition and dismissed the suit. Aggrieved by the same, the plaintiffs filed an appeal in A.S.No.28 of 2018 on the file District Judge, Erode at Gobichettipalayam. The first appellate court reversed the findings of the trial court and decreed the suit for partition. Aggrieved by the same the defendants have filed the present second appeal.

7. The learned counsel for the appellants/defendants would submit that the plaintiffs originally claimed exclusive title over the suit property. Since they filed the earlier suit in respect of the suit properties seeking declaration of title, they are not entitled to file the present suit for partition claiming themselves as co-sharers. He also submitted that the earlier litigation was disposed on 30.08.2011 and the present suit was filed by the plaintiffs only on 08.10.2014, and hence, the present suit is barred by limitation.

8. It is seen from the typed set of papers that before filing the present suit for partition, the plaintiffs filed a suit in O.S.No.5 of 2006 through their family Manager, seeking declaration of their exclusive title over the suit property and for permanent injunction and the same was dismissed by the trial court. The appeal in A.S.No.42 of 2010 filed by the plaintiffs was also dismissed by the first appellate court, however, liberty was granted to them to file a suit for partition. The judgement passed by the first appellate court in A.S.No.42 of 2010 has been marked as Ex.A12. A perusal of judgment and decree passed by



the first appellate court in A.S.No.42 of 2010 would indicate there was a finding in the said judgment that the plaintiffs were the co-owners of suit property and therefore, their prayer for declaration of exclusive title could not be accepted. Further, while dismissing the first appeal, the first appellate court granted liberty to the plaintiffs to file a suit for partition. Therefore, there was a clear findings in Ex.A12 that the plaintiffs, who were co-owners of the suit properties, were entitled to maintain a suit for partition. Based on the above said findings in the earlier litigation, the present suit has been filed by the plaintiffs seeking partition of their half share. Hence, the submission made by the learned counsel for the appellants that there was no liberty granted by the first appellate court in the earlier litigation is contrary to the findings rendered in A.S.No.42 of 2010 on 30.08.2011.

9. As mentioned above, the earlier litigation culminated in passing of judgment in A.S.No.42 of 2010 on 30.08.2011. The present suit has been filed on 08.10.2014. The cause of action for the partition suit is a continuous one and liberty was also granted to the plaintiffs by the first appellate court in the earlier litigation to file a partition suit. Therefore, the present suit has been filed within the limitation period. Further, the co-owner is entitled to maintain a suit for partition, unless he is ousted from the property. The present suit has been filed within a period of 12 years from the date of adverse claim in the earlier litigation. It is seen from Ex.A11 judgment passed in the earlier suit in



O.S.No.5 of 2006 that the partition deed entered into among the defendants was marked as Ex.B4 in the said suit and the said document was dated 28.03.2003.

Even assuming that the said date was taken as a starting point for limitation, the present suit has been filed well within the period of 12 years. In such circumstances, the submission made by the learned counsel for the appellants that the suit is barred by limitation is not appealable to this court.

10. Accordingly, this second appeal is dismissed. There shall be no order as to costs. Connected miscellaneous petition is closed.

24-04-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

MST

To

1. The III Additional District and Sessions Judge,
Erode at Gobichettipalayam.
2. The Subordinate Judge, Sathyamangalam .



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S.SOUNTHAR, J.

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24-04-20267