

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 21 / 11 / 2025

ORDER PRONOUNCED ON : 24 / 02 / 2026

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CORAM:

THE HONOURABLE MR. JUSTICE R. SAKTHIVEL

C.R.P. NO.2167 OF 2019

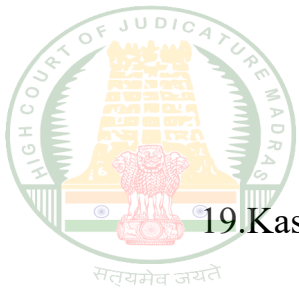
AND

C.M.P. NO.14011 OF 2019

1.Vetrivel
2.Vadivuarasi ... Petitioners /
Petitioners /
Plaintiffs

Versus

1.Narayanasamy (Died)
2.Ananda Krishnan
3.Velmurugan
4.Kolanjinathan
5.Thangamani
6.Subramaniyan
7.Ramalingam
8.Renganathan
9.Thamizharasi
10.Cholan
11.Saravanan
12.Minor Santhosh Krishnan
Rep. By his next friend and father
Saravanan
13.Muruvaayee
14.Kannagi
15.Devaki
16.Palanivel
17.Kathirvel
18.Sakthivel



19.Kaspa

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20.Gnanakumari
21.Gnanagurunathan
22.Akilandeswari

(1st Respondent passed away.
Respondents 20 to 22 are
brought on record as LRs' of the
deceased 1st respondent – Narayanasamy
vide Court Order dated March 21, 2024
made in CMP Nos.24462, 24466 and
24467 of 2024 in CRP No.2167 of 2019)

... Respondents /
Respondents /
Defendants

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the
Constitution of India, 1950 praying to set aside the Fair and Decretal Order
dated January 24, 2019 passed in I.A. No.650 of 2018 in O.S. No.43 of
2014 by the Subordinate Judge, Ariyalur.

For Petitioners : Mr.P.Valliappan
Senior Counsel
assisted by Mr.T.Deeraj

For Respondents
2, 20 to 22 : Mr.Sam Jayaraj Houston
for M/s.Sarvabhauman Associates

For Respondents
3 to 5, 7 and 8 : Mr.A.Mohammed Ismail

For Respondents
6, 9, 10, 13, 16 to 18: Served – No appearance

For Respondents
11, 15 and 16 : No residence



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ORDER

Feeling aggrieved by the Fair and Decretal Order dated January 24, 2019 passed by 'the learned Subordinate Judge, Ariyalur' ['Trial Court' for convenience] in I.A. No.650 of 2018 in O.S. No.43 of 2014, the Petitioners therein have preferred this Civil Revision Petition under Article 227 of the Constitution of India, 1950.

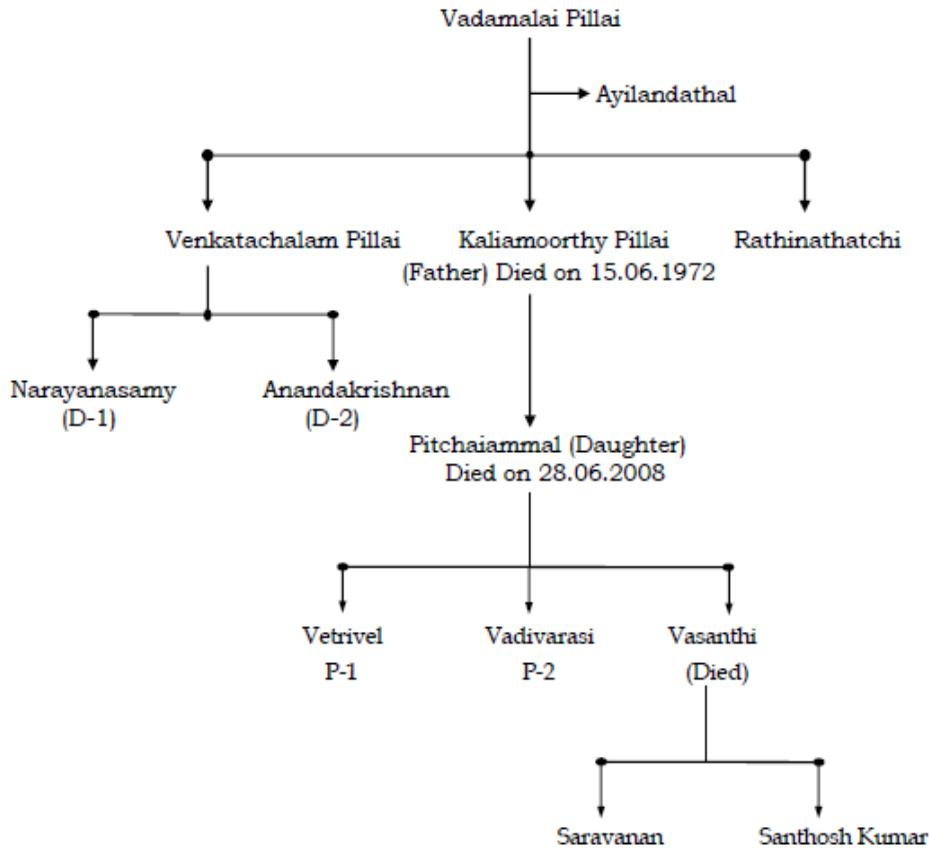
2. The Petitioners herein are the Plaintiffs and the Respondents 1 to 19 herein are the Defendants in the Original Suit in O.S. No.43 of 2014 on the file of the Trial Court.

3. During pendency of this Civil Revision Petition, the first respondent / first defendant – Narayanasamy passed away and Respondents 20 to 22 are brought on record as Legal Representatives of the deceased - Narayanasamy vide Order of this Court dated March 21, 2024 made in C.M.P. Nos.24462, 24466 and 24467 of 2024 in C.R.P. No.2167 of 2019.

4. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit. For better appreciation of



facts, the admitted relationship between the parties has been shown in the following genealogy:



5. The Plaintiffs filed an Original Suit for declaration of title, delivery of possession and *mesne* profits. The suit properties consist of 12 items, out of which Suit Item No.9 is situate at Ayan Thathanur and Vangaram Village and other properties are situate at Anganur Village. The case of the Plaintiffs is that the Suit Properties, and some other properties not the subject matter of the Suit, originally belonged to the family of



Venkatachalam and Kaliyamoorthy. In an oral family arrangement, that took place between the brothers, which was subsequently reduced into writing on May 31, 1948, the Suit Properties were allotted to the share of Kaliyamoorthy. As per the oral family arrangement, Kaliyamoorthy was in enjoyment of the Suit Properties till his demise on June 15, 1972. After his demise, his only daughter - Pichai Ammal was in possession and enjoyment of the Suit Properties. Pichai Ammal left the Suit Village and began to live at Kozhiyur. In her absence, the defendants 1 and 2 were looking after the share of Kaliyamoorthy at Anganur Village on behalf of Pichai Ammal. Pichai Ammal used to visit the village every now and then to supervise the agricultural operations. This was in vogue till her demise on June 28, 2008.

5.1. The plaintiffs 1 and 2 and one Vasugi are the children of Pichai Ammal. Vasugi passed away leaving behind defendants 11 and 12 as her legal heirs. Since the first plaintiff was employed at Hosur, he was unable to concentrate on the agricultural operations and hence, the defendants 1 and 2 continued to look after the Suit Properties and were in management of the same on behalf of the first plaintiff. They used to deduct the expenses and gave proceeds either in cash or in kind as and when the



situation demanded. Since Vasugi's legal heirs do not want to join as plaintiffs, they have been arrayed as defendants.

5.2. In the year 2013, the first plaintiff came to know that the name of the defendants were entered in the revenue records without the knowledge and consent of the plaintiffs. Since the defendants are not allowing the plaintiffs to enter into the Suit Properties, after issuing legal notice, the plaintiffs have filed the Original Suit for declaration of title, delivery of possession and *mesne* profits.

6. The second defendant filed written statement and the same was adopted by first defendant. Defendant No.10 filed written statement and the same was adopted by ninth defendant. To be noted, defendants 9 and 10 are purchasers of portions of suit properties from vendees of defendants 1 and 2. Defendants 1 and 2 denied the oral family arrangement and the pursuant document, which is the document in question, partition shit dated May 31, 1948. The said document is not true and genuine. It is incorrect to state that pursuant to the oral family arrangement, Kaliyamoorthy was in possession and enjoyment of the suit properties. According to defendants 1 and 2, several properties belongs to their family and they are situate at Anganur, Kozhiyur and Vangaram. Several decades ago, an oral family



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arrangement (not the one pleaded by plaintiffs) took place between Kaliyamoorthy and Venkatachalam. Kaliyamoorthy had no male issue and had only one daughter by name Pichai Ammal, who is residing with her husband at Kozhiyur since the death of Kaliyamoorthy. Venkatachalam remained in Anganur Village and as per the customs and convention surrounding an oral family arrangement, all the properties situate at Anganur being *Punja* land and some house sites, were allotted to Venkatachalam and he alone was in absolute possession and enjoyment of those properties. Patta and other revenue records were mutated as early as 1986. After the demise of Venkatachalam, the revenue records were mutated in the name of defendants 1 and 2 and subsequent purchasers as detailed in the list attached with the written statement. Suit Item No.9 situate at Vangaram Village was allotted to Venkatachalam and was sold in 1988 to three persons. Further, properties at Kozhiyur being *Nanja* land were allotted to the share of Kaliyamoorthy and after his demise, his daughter - Pichai Ammal sold different items to different persons as detailed in the list annexed along with the written statement. Similarly, the portions allotted to Venkatachalam at Kozhiyur were also sold off in 1978 to the knowledge of Pichai Ammal and her husband. Suit Item No.11 is a



separate property purchased by second defendant *vide* Sale Deed July 11, 1994 from one Ramalingam. Other plaint allegations were denied as false.

7. With the above pleadings, issues were framed and trial commenced. While P.W.1 entered the witness box, plaintiffs' side wanted to mark the partition chit dated May 31, 1948. At that instance, the defendants raised serious objections. Therefore, the Trial Court did not permit the Plaintiffs to mark the said document. Hence, the plaintiffs filed an Interlocutory Application under Section 151 of the Code of Civil Procedure, 1908 in I.A. No.650 of 2018 praying to receive the unregistered partition chit dated May 31, 1948 as evidence.

8. Defendants 1 and 2 filed counter in the Interlocutory Application. They averred that the document in question declares rights *inpraesenti* and is unstamped and unregistered and hence, cannot be received as evidence.

9. The Trial Court after hearing both sides, concluded that the document is an unstamped and unregistered and the same cannot be considered even for collateral purposes by relying on the Judgment in *A.C.Lakshmipathi -vs- A.M.Chakrapani Reddiar*, reported in *2001 (1) CTC 112* and dismissed the Interlocutory Application. Feeling aggrieved



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by the dismissal Order, the plaintiffs filed this Civil Revision Petition under Article 227 of the Constitution of India, 1950.

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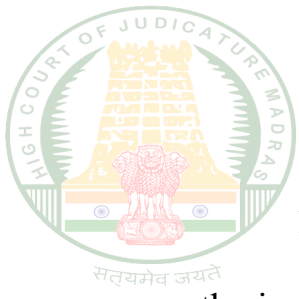
10. Mr.P.Valliappan, learned Senior Counsel appearing for the revision petitioners argued that the document sought to be marked is a partition schedule filed along with the plaint. The execution of the document was not specifically denied by the defendants in their written statement. A bare reading of the document would show that prior to the said document, an oral family arrangement took place. Pursuant to the oral family arrangement, the document was executed. He drew attention of this Court to a portion of the partition schedule that reads 'நாம் இருவரும் பாகப்பிரிவினை செய்து கொண்ட பாக அட்டவணை', and argued that in the partition schedule, past tense was used which would prove the oral family arrangement prior to it. Thus, the document merely records past transactions and does not create any rights *inpraesenti*. Hence, it does not require any stamp duty and registration. The Trial Court failed to understand the nature of the document and erred in dismissing the Interlocutory Application. Accordingly, he prayed to allow the Civil Revision Petition, set aside the Trial Court's Order and allow the Interlocutory Application in I.A. No.650 of 2018. In support of his



submissions, the learned Senior Counsel relied on the following

Judgments: (i) K.Arumuga Velaiah -vs- P.R.Ramasamy, reported in (2022) 3 SCC 757; (ii) Ravinder Kaur Grewal -vs- Manjit Kaur, reported in (2020) 9 SCC 706; (iii) Navinraj -vs- Gnanasekar, reported in 2017 (2) MWN (Civil) 165; (iv) Pappi @ Nagarajan -vs- Ramasamy Naidu, reported in 2025 (5) CTC 167; (v) Saminathan -vs- Sukumar, reported in 2021 (5) CTC 859; and (vi) Venkatasubramaniya Chettiar -vs- Perumal Chettiar, reported in 2012 (3) CTC 160.

11. *Per contra*, Mr.Sam Jayaraj Houston, learned Counsel for the respondents 2, 20 to 22 and Mr.A.Mohamed Ismail, learned Counsel for the respondents 3, 5, 7 and 8 would contend that the document in question creates rights *inpraesenti*. Hence, it ought to have been stamped and registered according to the Indian Stamp Act, 1899 as well as the Registration Act, 1908. Since the document has not been stamped and registered, it cannot be admitted as an evidence even for a collateral purpose. In support of their submissions, learned Counsel appearing for the Respondents 2, 20 to 22 relied on the following Judgments: (i) Korukonda Chalpathi Rao -vs- Korukonda Annapurna Sampath Kumar, reported in (2022) 15 SCC 475; (ii) A.C.Lakshmipathi's Case [cited *supra*].



12. This Court has heard on either side and perused the plaint and the impugned document. It is settled law that partition need not always be in writing. It may also be orally made. Likewise, family arrangement may also be oral or in written. Oral family arrangement is valid just like oral partition. Any document executed in order to evidence and record a past oral family arrangement need not be stamped and registered as it does not create any rights *inpraesenti*. If a family arrangement is reduced into writing whereby any rights are assigned, created, extinguished or limited in respect of immovable properties, then it must be stamped and registered as per the Indian Stamp Act, 1899 and the Registration Act, 1908. If any family arrangement is stamped but not registered it can be looked into for collateral purposes. Whether a particular purpose is a collateral purpose is a question of fact which needs to be decided based upon the facts and circumstances of each case. A family arrangement not stamped and not registered cannot be looked into for any purpose [See *A.C. Lakshmipathi's Case* (cited *supra*)]

13. On bare perusal of the document in question, this Court finds that both past tense and future tense has been employed in the document. In the title of the document, past tense is used as if the document records past transactions. But when this Court looks inside the document, future



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tense has been used as if the document creates rights *inpraesenti*. When so, the true intent and nature of the document cannot be decided on bare reading of the document in isolation. It requires oral and documentary evidence. When a document is tendered as evidence, the Court has to, as far as possible, decide its admissibility then and there *i.e.*, at the inception itself. When it is not possible to decide upon the admissibility of the document on bare reading thereof at the inception stage itself, Court may mark the document tentatively recording all the objection raised by the other side, and proceed further with the case, deferring the decision on the admissibility to a later point of time. It is true that in the Judgment of Hon'ble Supreme Court in ***Bipin Shantilal Panchal -vs- State of Gujarat***, reported in **(2001) 3 SCC 1**, it was held that question of stamp duty must be decided at the inception stage itself. However, in this case, the same is not possible. This is because, the document attracts stamp duty only when it creates rights *inpraesenti*. As stated *supra*, bare reading of the document in question does not give a clear picture as to whether the document records past transactions or creates rights *inpraesenti*. Hence, it would not be possible to decide on the stamp duty charges at the inception stage itself. In these circumstances, the Trial Court shall receive and mark the document tentatively recording all the objection raised by the other side



including stamp duty, and proceed further with the case, deferring the decision on the admissibility and stamp duty to a later point of time as it may think fit. If the Trial Court concludes that the document records past transactions, then the Trial Court shall admit the document as evidence completely, as the document for merely recording past transaction would not need stamp duty and registration. On the other hand, if the Trial Court concludes that the document creates rights *inpraesenti*, the question of collateral purpose would not arise in this case, as even according to the plaintiffs the possession of the suit properties are with the defendants, as it could be seen from the prayer for recovery of possession.

14. No dispute with the case laws relied on either side.

15. This Court is conscious of the fact that objections regarding stamp duty must be decided then and there. However, considering the facts and circumstances of the case, this Court is directing the Trial Court to *inter-alia* decide on the stamp duty at a later point of time, as narrated above.

16. With the above observations, this Civil Revision Petition is allowed. Considering the facts and circumstances of the case, there shall be



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no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

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17. The Registry is directed to send the original document dated May 31, 1948 [partition chit / பிாக அட்டவணை] to the Trial Court in a safe and secure manner keeping in mind the age of the document, and obtain due acknowledgment from the Trial Court upon receipt of the same.

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Index : Yes
Neutral Citation : Yes
Speaking Order : Yes
TK

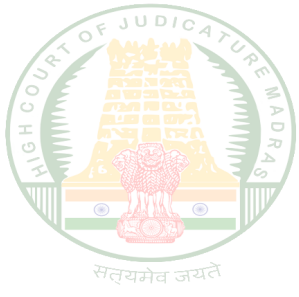
To

The Subordinate Judge
Ariyalur.

Copy to :

The Section Officer
V.R. Section
High Court of Madras
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R. SAKTHIVEL, J.

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PRE-DELIVERY ORDER MADE IN
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