IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25-06-2026

DATE OF DECISION : 06-08-2026

CORAM

THE HONOURABLE MR JUSTICE P. VELMURUGAN
AND
THE HONOURABLE MRS.JUSTICE K. GOVINDARAJAN THILAKAVADI

OSA No.253 of 2020
AND
CMP Nos.12638 of 2020, 14493 & 14496 of 2022

Dr.Manohar Rama Rau
829, Poonamallee High Road, Kilpauk
Chennai 600 010

Appellant

Vs

1. Dr.Vijaykumar Rau (Deceased)

2. Mrs.Pushpa Vijaychander
   5, Kengal Hanumanathiah Road
   Bangalore 560 027

3. Ms.Shoba Bhujang
   473, Spring Lake Drive Melbourne
   Florida 2940, United States of America

4. Ms.Devika Bhujang
   473, Spring Lake Drive Melbourne
   Florida 2940, United States of America
   (R3 & R4 brought on record as LRs of
   the deceased R1 vide order of Court
   dated 17.02.2026 in CMP Nos.13210,
   13203 & 13206 of 2025
   in OSA No.253 of 2020)

Respondents

Memorandum of Grounds of Original Side Appeal under Order XXXVI, Rule 1 of the Madras High Court Original Side Rules read with Clause 15 of the Letters Patent, against the preliminary judgment and decree passed by the learned single Judge in C.S.No.912 of 2004 dated 26.08.2020.

For Appellant: Mr.Perumbulavil Radhakrishnan

For Respondents: Mr.S.Ravi
Senior Counsel for
M/s.Gupta & Ravi for R2

Mr.M.K.Kabir
Senior Counsel for
Mrs.M.K.Padma for R3 & R4

JUDGMENT

P.Velmurugan J.

This original side appeal is directed against the judgment and decree passed by the learned single Judge in C.S.No.912 of 2004 dated 26.08.2020, in and by which the civil suit filed by the plaintiff has been decreed in part with a preliminary decree.

2. The appellant is the first defendant, the first respondent is the plaintiff and the second respondent is the second defendant in the suit. During the pendency of this appeal, since the first respondent/plaintiff died, his legal representatives have been brought on record as the third and fourth respondents in this appeal.

3. The first respondent/plaintiff laid the suit seeking for the following

reliefs:-

(i) to partition the suit schedule property at No.829 (Old No.453), Poonamallee High Road, Kilpauk, Chennai 600 010 by metes and bounds and allot to the plaintiff his 4/9th share in the same.

(ii) to appoint an Advocate Commissioner to divide the assets including the immovable property by metes and bounds and allotting to each sharers their respective shares.

(iii) to direct the 1st defendant to render true and proper accounts of all the income and expenditure of the partnership firm, 'Rama Rau Poly Clinic' for the period 01.04.2002 till the date of decree.

(iv) to direct the settlement of accounts of the firm in terms of Sections 46 and 48 of the Indian Partnership Act read with the terms of the partnership deed for the period 01.04.2002 to 12.06.2004 and upon ascertainment of the amount payable to plaintiff, direct the 1st defendant to pay the same and for costs.

4. The case of the plaintiff is that the plaintiff and the defendants are brothers and sister born to one Late Dr.B.Rama Rau and Late Smt.Sumathi Rama Rau. The property at No.829 (Old No.453), Poonamallee High Road, Kilpauk, Chennai-600 010 was originally purchased by one Late Dr.P.Rama Rau, father of Dr.B.Rama Rau through a sale deed dated 16.12.1937. The said Dr.P.Rama Rau had three children, viz., Dr.B.Rama Rau (father of the parties herein), Dr.Madhava Rama Rau and Smt.Malathy Sripathy Rau. He established a nursing home in the said property. Originally, Dr.P.Rama Rau was in possession and enjoyment of the property till his death on 11.05.1956. He died

intestate. His estate was succeeded by his wife and three children. The daughter of the said Dr.P.Rama Rau, viz., Smt.Malathy Sripathy Rau severed her interest from the family after obtaining her 1/4th share by way of a registered partition deed dated 25.01.1961. The other members continued as members of the joint family in respect of the remaining 3/4th share of the property. Thereafter, by a partition deed dated 16.05.1962, an extent of 20 grounds 961 sq.ft. was allotted to Dr.B.Rama Rau on condition that he pays a sum of Rs.1,00,000/- each to his mother and brother as owelty. On such payment, Dr.B.Rama Rau became the absolute owner of the property. He continued the nursing home established by his father in the name and style of 'Rama Rau Poly Clinic'. On 10.04.1972, Dr.B.Rama Rau, the father of the parties constituted a partnership, inducting the plaintiff and the first defendant as partners in the nursing home along with him. In the above partnership deed dated 10.04.1972 (Ex.P4), it is admitted that Dr.B.Rama Rau effected a partition on 31.03.1972 dividing the capital of the nursing home into three equal shares. Subsequently, by a deed of partial partition dated 23.01.1980 (Ex.P5), the properties mentioned therein under Schedules II, III and IV were allotted to Dr.B.Rama Rau, first defendant and the plaintiff respectively, and the remaining extent of 11 grounds 563 sq.ft as mentioned under Schedule I therein, as mentioned at Item No.1 under Part-II of Schedule II to the suit (hereinafter referred to as "the suit schedule property") was retained for the partnership business. Thereafter, a supplementary deed of partnership was entered into on 01.04.1992 and a further agreement was also drawn on 01.07.2001. After the demise of Dr.B.Rama Rau, the father of the parties on 05.01.2003, the partnership was reconstituted on 06.01.2003 vide partnership deed (Ex.P10) at the instance of the first defendant without final settlement of accounts and the partnership was one at will. Thereafter, the partnership suffered loss. Except granting licence to one Dr.C.Geetha Haripriya to carry on her practice and M/s.Ambalavana Pharmacy to run their business, nothing was done in the partnership business. Therefore, the plaintiff decided to severe his connection and decided to dissolve the partnership firm and issued a letter. Despite reply, no further action was initiated and the partnership business was not carried out and therefore, the plaintiff terminated the partnership with immediate effect by his letter dated 12.06.2004 (Ex.P13).

5. The first defendant, admitting the relationship between the parties, filed his written statement stating that the suit is not maintainable, since the subject property is an asset of the partnership firm. On 10.04.1972, their father Dr.B.Rama Rau constituted a partnership firm and inducted the first defendant and the plaintiff as partners. However, the further agreement between the plaintiff and the first defendant was not drawn to enable the first defendant to draw additional amounts and the first defendant also denies that the plaintiff and

the defendants are in joint possession. The first defendant alone is running the partnership hospital, while the plaintiff is a dormant partner and the second defendant has no right at all. It was also stated by the first defendant that the partnership asset is measuring 11 grounds 563 sq.ft. under partnership deed dated 10.04.1972. After the father of the parties died, the partnership was reconstituted on 06.01.2003, which was constituted only at the instance of the plaintiff. Therefore, the alleged partnership deed dated 06.01.2003 is non-est in law and unenforceable. Hence, the subsequent letter terminating the alleged partnership has no legal validity. The first defendant dedicated his life to uplift the hospital, while the plaintiff was in USA and he abandoned the partnership hospital. It is the further case of the first defendant that his father Dr.B.Rama Rau has transferred considerable property during his life time to his only daughter, the second defendant and further, his father bequeathed some properties to the plaintiff and the first defendant for personal enjoyment and the balance property for the hospital/nursing home and constituted it as partnership asset. The ultimate intention of their father is to preserve the hospital for doing service to the society. Contrarily, the intention of the plaintiff and the second defendant is to sell the hospital premises to developers and destroy the intention with which their father developed the hospital. Therefore, in any event, the suit for partition of the property of a partnership firm cannot lie and the same is not maintainable. However, the first defendant, in his reply dated 14.06.2004, admitted that the plaintiff and himself (D1) are entitled to 2/3rd share each and the second defendant is entitled to a moiety of the estate of Dr.B.Rama Rau, the share of Dr.B.Rama Rau being 1/3rd in the partnership business. The said share is also divisible between the plaintiff and the defendants. Hence, the plaintiff and the first defendant are entitled to 4/9th share each and the 2nd defendant is entitled to 1/9th share.

6. The second defendant filed her written statement stating that though the plaintiff and the first defendant were inducted as partners in the partnership business, they were merely nominal participants in the business. The entire business and the affairs of the firm was attended to and nurtured single-handedly by Dr.B.Rama Rau, the father of the parties. On 23.01.1980, a deed of partial partition was entered between their father Dr.B.Rama Rau, the first defendant and the plaintiff, wherein certain allotments among themselves and the remaining extent continued to be held jointly for the business of the firm 'Rama Rau Poly Clinic'. The said property also consists of a residential portion, where their father was residing. Their father died on 05.01.2003 and his estate devolved upon his children in three equal shares. After the death of their father Dr.B.Rama Rau, she is also entitled to an equal share in the estate of her father as a Class-I legal heir along with the plaintiff and the first defendant.

7. Based on the above pleadings, the following issues were framed:-

(i) Whether, on the demise of Dr.B.Rama Rau intestate on 05.01.2003, the plaintiff is entitled to partition and separate possession of 4/9th share in the suit property?

(ii) Whether, on the termination of the partnership at will on 12.06.2004, the partnership having been dissolved, the first defendant is liable to render true and proper accounts from 10.04.1972 onwards?

(iii) Whether the accounts of the partnership are liable to be settled under Section 46 and 48 of the Act for the period 10.04.1972 onwards?

(iv) Whether the plaintiff and the defendants are entitled to divide assets including the immovable properties mentioned in the schedule by metes and bounds?

(v) Whether the suit is not maintainable?

(vi) Whether the first defendant is entitled to continue the partnership business, despite dissolution of the firm?

(vii) To what reliefs the parties are entitled to?

8. On the side of the plaintiff, the plaintiff examined himself as PW1 and exhibited 18 documents as Exs.P1 to P18. On the side of the defendants, the first defendant examined himself as DW1 and exhibited 3 documents as Exs.D1 to D3. No oral or documentary evidence was adduced on the side of the second defendant.

9. The learned single Judge, after hearing both sides and upon appreciation of the oral and documentary evidence, decreed the suit in part by

passing a preliminary decree, as follows:-

a) dividing the suit schedule property (immovable property) into three equal shares and allotting 1/3rd share to the plaintiff and the defendants 1 and 2 are also entitled for allotment of 1/3rd share each on payment of necessary Court fee;

b) directing the first defendant to render the accounts relating to the affairs of the firm, viz., 'Rama Rau Poly Clinic' from 06.01.2003 till date, within six months from the date of receipt of a copy of this judgment. As far as Part I movable property is concerned, no separate relief is granted by this Court, in view of the relief granted in Clause (b).

10. Challenging the above judgment and decree, the first defendant is before this Court.

11. The learned counsel for the appellant/first defendant, reiterating the grounds raised in the appeal, inter alia contended that the suit is not maintainable, since the property is an asset of the partnership firm and that the suit for partition will not lie in respect of the partnership business. When the recital in the partnership deed dated 10.04.1972 shows that the shares were ploughed into the capital of the firm and no private property remains for partition, the suit for partition must fail. The second defendant, who is not even a partner, cannot claim any right over the assets of the firm. When the partnership deed dated 10.04.1972 under Ex.P4 was a fresh one and that prior

thereto, the nursing home business was run as a proprietary concern, it cannot be claimed that the nursing home was run by the said Dr.B.Rama Rau as Karta of the family. Once the property has become the asset of the firm, the character of the said property as joint family recedes into oblivion and becomes non-est. However, the learned Judge erred in relying on the contention of the plaintiff that the joint family business was used for the business of the firm when there is no evidence regarding the same and when there is an admission that the property had vested in the firm, to hold that the suit was maintainable when a distinct plea that only a suit for dissolution of the firm was maintainable. The learned Judge also failed to see the import of the documents Exs.P4 & P5, which would clearly treat the suit schedule property as the property of the firm and as a partnership asset. He would also contend that none of the above exhibits refer to the suit schedule property as joint family property nor describe the use of the property as lease hold rights and the learned Judge has gone beyond the purview of the proved documents to give its own interpretation to the same. The learned Judge erred in accepting the arguments of the second defendant, who had not ventured to get into the witness box to assert her contention in defence, though she was sailing with the plaintiff, that the property at all times belonged to the Hindu Undivided Family and that the right of the co-parceners cannot be taken away. The learned Judge committed grave error in relying on the contention of the second defendant that though she was claiming 1/9th share in the assets, in view of the judgment of the Hon'ble Supreme Court, she is entitled to 1/3rd share in the property. The learned Judge committed an error in assuming that the oral evidence of PW1 and DW1 showed that the nursing home was run by the Hindu Undivided Family and that DW1 had spoken that 'only the nursing home run by the HUF was shown as the capital of the partnership firm' would be contrary to the pleadings of the plaintiff and the documents filed by the plaintiff that the suit property was transferred to the stocks of the firm contrary to the provisions of Section 91 of the Evidence Act, which prohibits any secondary evidence in place of the documents which stand proved. The learned Judge erred in law in treating the statement of DW1 as admission that the assets and liabilities of the polyclinic were divided into three among the father and two sons, when the documents Exs.P4 & P5 clearly state that all the land and assets were treated as the property of the firm. The learned single Judge failed to note that the second defendant was only a 'confirming party' to the sale deed, Ex.D1 and not a party vested with any rights, title and possession, as she did not have any rights in the property at all. The learned Judge failed to note that the second defendant was married in 1988 and that disentitles her to the provisions of the prevailing judgment of the Hon'ble Supreme Court pertaining to the 2005 amendment to Section 6 of the Hindu Succession Act with regard to the rights of female coparceners of joint family. The learned Judge has circumvented the facts of the case and erroneously held in paragraph-33 of the judgment that the properties surrounding the nursing home were used only for the business of the nursing home and that the Hindu Undivided Family originally owned the suit property inherited by the father of the parties hereto, and that the members of the joint family were entitled to an equal share in that property *de hors* the evidence and admission of the plaintiff and the second defendant. The learned Judge failed to see that in Tamil Nadu, Chapter II-A had been introduced and that Section 29A(iv) clearly sets out that nothing in this Chapter shall apply to a daughter married before the commencement of the Hindu Succession (Tamil Nadu Amendment) Act, 1989 and that the second defendant was excluded from the provisions of Section 6 of the Central Act. The learned Judge erred in law in holding that the suit property is liable for partition and that each party was entitled to 1/3rd share each, de hors the evidence of the plaintiff and the second defendant, and wrongly directed the first defendant to render accounts of the firm from 06.01.2003 till date. The learned counsel also relied upon a judgment of the Hon'ble Supreme Court in the case of *Addanki Narayanappa & another v. Bhaskara Krishnappa (dead) and thereafter his heirs and others, AIR 1966 SC 1300* in support of his contentions. Hence the learned counsel sought for allowing the appeal by setting aside the impugned judgment and decree.

12. The learned Senior Counsel appearing for the second

respondent/second defendant would contend that there is no material on record to show that the property was shown as an asset of the partnership firm, whereas the evidence would clearly indicate that the property was all along treated as Hindu Undivided Family property. If the entire property was brought into the stocks of the firm, the partial partition deed (Ex.P5) would not have come into existence at a later point of time. Merely because the property was used for the firm's business, the right of the coparceners of the property cannot be taken away. The learned Senior Counsel would further contend that though the second respondent had wrongly claimed 1/9th share after the demise of the father in the year 2003, in view of the law laid down by the Hon'ble Supreme Court entitling the daughter to claim equal share as that of son, the second respondent is also entitled to 1/3rd share in the suit schedule property. In support of his contentions, the learned Senior Counsel also relied upon the following judgments:-

(i) *Addanki Narayanappa & another v. Baskara Krishnappa, AIR 1966 SC 1300*

(ii) Arjun Kanoji Tankar v. Santaram Kanoji Tankar, (1969) 3 SCC 555

(iii) M/s Boda Narayana Murthy & Sons v. Valluri Venkata Suguna, AIR 1978 AP 257

(iv) Danamma & another v. Amar & others, (2018) 3 SCC 343

(v) Vineetha Sharma v. Rakesh Sharma & others, (2020) 9 SCC 1

Therefore, the learned Senior Counsel contended that the impugned judgment and decree need no interference at the hands of this Court.

13. The learned Senior Counsel appearing for the respondents 3 & 4/plaintiffs would contend that the property was originally owned by Dr.P.Rama Rau, who purchased the same in the year 1937 and after his demise, the property came into the hands of Dr.B.Rama Rau, the father of the parties and this fact is not in dispute. The property all along remained as a joint family property. The father of the parties continued the clinic established by his father in the name and style of 'Rama Rau Poly Clinic'. In the year 1972, Dr.B.Rama Rau, as a karta of the family, inducted the deceased plaintiff and the first defendant as partners in the firm. Thereafter, a partial partition deed was executed allotting certain portions to the father and two sons and the remaining property was retained only for the purpose of running the business of the firm. After the partial partition, the father sold his share in favour of third party, wherein the second defendant was also made as confirming party and that itself clearly indicates that the property has never been brought into the stocks of the partnership firm and it always remained as a joint family property. The learned Senior Counsel would further contend that the statement of the father Dr.B.Rama Rau in subsequent documents also elucidates that he never intended to treat the suit schedule property as an asset of the partnership firm and what was intended by him is only to use the property for the purpose of business of

the firm. Therefore, in the absence of any evidence to show that the suit schedule property was brought into the stocks of the firm, it cannot be said that the suit is not maintainable for partition. Admittedly, the partnership was reconstituted between the two brothers which was at will and moreover, the letter issued by the plaintiff terminating the partnership is also admitted by the first defendant. The father of the parties also died in the year 2003. Therefore, the suit schedule property all along retained the character of joint family property. The learned Senior Counsel also would contend that after the death of the father of the parties, the plaintiff would be certainly entitled to divide the property and there is no need whatsoever to file a suit for dissolution of the firm, inasmuch as the joint family property was only used for the business of the partnership firm. When Section 69(3) of the Indian Partnership Act, 1932 does not bar the suit by an unregistered firm, merely because the firm was unregistered, the plaintiff cannot be prevented from laying a suit only on the ground of non-registration of the firm. Therefore, the suit for partition is maintainable and the plaintiff is entitled for allotment of his share in the suit schedule property. The learned Senior Counsel also relied upon the following judgments in support of his contentions:-

(i) *M/s Boda Narayana Murthy & Sons v. Valluri Venkata Suguna & others, AIR 1978 AP 257*

(ii)T.Rajmohan v. T.Jayaraman, 2024 SCC OnLine Mad 4730

(iii) P.Venkateswarlu v. C.Lakshmi Narasimha Rao (died), AIR 2002 AP 62

(iv) Sharad Vasant Kotak & others v. Ramniklal Mohanlal Chawda & another, (1998) 2 SCC 171

(v) M/s Malabar Fisheries Co., Calicut v. Commissioner of Income Tax, Kerala, (1979) 4 SCC 766

(vi) K.Mohammad Ziauddin Sahib v. Kosha Abdul Munaf Saheb & others, (1973) 4 SCC 57

(vii)Heather Luiz v. Nirene Dennis Luiz & others, MANU/KE/0786/2018

(viii) Uttam Singh Duggal & Co.Ltd. v. United Bank of India & others, (2000) 7 SCC 120

(ix)Karam Kapahi & others v. Lal Chand Public Charitable Trust & another, (2010) 4 SCC 753

Therefore, the learned Senior Counsel contended that the impugned judgment and decree need no interference.

14. We have considered the rival contentions and perused the materials available on record.

15. The case of the appellant/first defendant is that the suit property originally belonged to the grandfather of the parties to the suit and after the death of their grandfather, under the deed of partition and family arrangement dated 16.05.1962, since an extent of 9 grounds and 1659 sq.ft., of landed property (1/4th share) was already partitioned under the deed of partition dated

25.01.1961 and setted in favour of Mrs.Malathi Sripathi Rau, the daughter of Mr.P.Rama Rau (grandfather of the parties), an extent of 20 grounds and 961 sq.ft., or thereabouts of landed property came to the father of the parties to the suit. Thereafter, during the lifetime of the father of the parties, a deed of partnership dated 10.04.1972 (Ex.P4) was constituted between the father and two sons, namely, Dr.B.Rama Rau (Father), Dr.Manohar Rama Rau and Dr.Vijaykumar Rau (1st Defendant & Plaintiff) dividing the capital of the nursing home business standing in its books as on 31.03.1972 into three equal shares amongst them, based on the partition effected by the father on 31.03.1972, agreeing to carry on the business of the nursing home in partnership from 01.04.1972 on certain terms and conditions as stated therein. Subsequently, by a deed of partial partition dated 23.01.1980 (Ex.P5) entered into between the father, 1st defendant and plaintiff, out of the total extent of 20 grounds and odd described in Schedule I, since the plots described in Schedule II, III & IV were not required by the firm for its business, an extent of 2 grounds and 196 sq.ft., of property described in Schedule II was allotted to the father; an extent of 2 grounds and 726 sq.ft., of property described in Schedule III was allotted to the 1st defendant and an extent of 2 grounds and 720 sq.ft., described in Schedule IV was allotted to the plaintiff, besides an extent of 2 grounds and 815 sq.ft., described as ‘C’ was set apart as common pathway to be used by all the parties. Now the suit property to an extent of 11 grounds and 563 sq.ft., along with building thereon is treated as the property of the partnership firm. They also entered into a supplementary deed of partnership on 01.04.1992 agreeing to modify the share of profits with provision of salary and interest to the partners etc. Again an agreement dated 01.07.2001 was entered into between the 1st defendant and his father for rendering professional services to the inpatients and outpatients of the clinic and for remuneration payable thereon. Even as per the recital in the partnership deed dated 10.04.1972, the death, insolvency or retirement of the partners shall not dissolve the partnership. However, on 12.06.2004, the plaintiff not only sent a letter to the first defendant terminating his partnership with immediate effect and to give him the share of profits and assets of the firm in view of its dissolution, but also filed the suit for partition of the suit schedule property by metes and bounds and to allot the plaintiff his 4/9th share and for other reliefs, on the ground that the suit schedule property all along retained the character of joint family property contrary to the documents. Therefore, the suit for partition is not at all maintainable. At best, if the plaintiff does not want to continue the partnership, he can only file a suit for dissolution of partnership and not the suit for partition. It is also the case of the appellant that he only has taken care of the property during the lifetime of his father and therefore the second respondent cannot claim any share as a co-parcener.

16. The specific case of the first respondent/plaintiff is that the property has never been brought into the stocks of the partnership firm and it always remained as a joint family property. In the absence of any evidence to show that the suit schedule property was brought into the stocks of the firm, it cannot be said that the suit is not maintainable for partition.

17. The case of the second respondent/second defendant is that after the death of the father of the parties to the suit, she is entitled to an equal share in the estate of her father as a co-parcener like that of the appellant and the first defendant.

18. In view of the above, the points for consideration in this appeal are as follows:-

(i) Whether the suit schedule property treated to be the asset of the partnership firm?

(ii) Whether the suit schedule property continues as Hindu Undivided Joint Family property all along and as per the amendment in Hindu Succession (Amendment) Act of 2005, the second respondent is entitled to 1/3rd share on par with the appellant and the first respondent?

19. Point (i): Admittedly, the suit schedule property is situate at No.829, Poonamallee High Road, Kilpauk, Chennai, which was purchased by the grandfather of the parties to the suit covering large extent of 1 Cawnie, 8

Grounds and 220 3/8 square feet and thereabouts under the sale deed dated 06.12.1937 (Ex.P1). Thereafter, after the demise of the grandfather of the parties in the year 1956, under the deed of partition dated 25.01.1961 (Ex.P2), the grandmother, the father of the parties along with his brother settled an extent of 9 grounds and 1659 sq.ft., in favour of the daughter of the deceased grandfather/sister of the father of the parties herein representing her 1/4th share in the estate of the deceased grandfather. Later, under the deed of partition and family arrangement dated 16.05.1962 (Ex.P3), the remaining property consisting of land and building inclusive of the clinic to an extent of 20 grounds and 961 3/8 sq.ft., was allotted to the father of the parties to the suit on condition of payment of owelty to his mother and brother, and they enjoyed it as Hindu Undivided Joint Family property. Later, finding that the extent of land with large building thereon and other assets were not feasible of convenient division by metes and bounds into 3 equal shares, the father along with the appellant and first respondent entered into a deed of partnership dated 10.04.1972 (Ex.P4) and as per the recitals in the said partnership deed, the entire joint family property consisting of the nursing home, assets and liabilities representing the capital of the nursing home hitherto run by the Kartha of the Hindu Undivided Family were treated as the partnership property. The pleadings raised by the parties would show that it is nobody's case that the suit schedule property with larger extent was continued as a joint family property after the partnership deed dated 10.04.1972 under Ex.P4 was entered into and even the deed of partial partition dated 23.01.1980 (Ex.P5) and the supplementary deed of partnership dated 01.04.1992 (Ex.P6) entered during the lifetime of the father of the appellant and the first respondent also confirms the same that it was not treated as joint family property. The partnership deed at will dated 06.01.2003 (Ex.P10) entered into between the appellant and the first respondent after the demise of their father on 05.01.2003 also shows that the nursing home business was continued as a partnership property and not as Hindu Undivided Family joint property. Moreover, the recitals in Ex.P4 would clearly show that the capital of the nursing home business standing in its books as on 31.03.1972 was divided into 3 equal shares amongst the two sons and the father based on the partition effected on 31.03.1972 and subject to the terms inter alia that the name of the firm shall be 'Rama Rau Poly-clinic; that the capital of the partnership is the assets and liabilities of the nursing home hitherto run by the Hindu Undivided Family which has been divided and credited equally in the capital account of each of the partners in the firm's books; that the assets and liabilities of the nursing home business hitherto carried on by party No.1 as Kartha of the Hindu Undivided Family shall constitute the assets and liabilities of the partnership; that the death, insolvency or retirement of partners shall not dissolve the partnership and it shall be carried on by the remaining partners on such terms and conditions as may be agreed upon; that the accounts of the firm shall be closed on the 31st March each year; that the profits and losses of the firm shall be shared and borne by the partners as the case may be equally @ 33.33%. Therefore, when Ex.P4 partnership deed is very clear that all the partners, namely, father and two sons had constituted the partnership and the property was brought into the capital of the partnership firm in the year 1972 itself, admittedly, the second respondent was not a co-parcener. Though Section 29A of the Hindu Succession (Tamil Nadu Amendment) Act, 1989, which came into force on March 25, 1989 granted daughters equal coparcenary rights by birth in joint Hindu family property and to receive a share on par with the sons, but will not apply to a daughter married before the commencement of the said Act, and the subsequent amendment brought in Section 6 of the Hindu Succession (Amendment) Act, 2005 (Central Act) entitling the female daughter to a share in the coparcenary property equal to that of a son irrespective of the marriage or death of the father, in the case on hand, even in the year 1972, the property was seized off from the Hindu Undivided Family and thrown into the stocks of the partnership firm. Moreover, the State law explicitly protected valid property partitions or alienations that occurred before March 25, 1989, meaning past divisions could not be reopened.

20. As stated already, even the pleadings of the parties in the suit would clearly show that it was nobody’s case that the property continued as Hindu

Undivided joint family property after 1972 under Ex.P4. Even the first respondent/plaintiff filed the suit asking for partition and allotment of his 4/9th share of the partnership property, in which the second respondent/second defendant filed a written statement giving her no objection for decreeing the suit as prayed for and allot her 1/9th share. Therefore, it cannot be pleaded that the property continues as Hindu Undivided Joint Family property even after the death of the father of the parties. Hence, the appellate Court, as a fact-finding Court, considering the pleadings, can re-appreciate the evidence independently to arrive at its conclusions. On a clear reading of Ex.P4, partnership deed constituted between the appellant, first respondent and their father and Ex.P5, partial partition deed executed between the same parties and subsequently, after the death of the father, the partnership deed executed between the appellant and the first respondent under Ex.P10, would all show that the property was only treated as an asset of the partnership firm. Though in the year 1980, the father and sons had partitioned the property forming an extent of 6 grounds and odd among themselves and left an extent of 2 grounds and odd to be used as common pathway, the remaining property forming an extent of 11 grounds and odd under Schedule I continued as property of the partnership firm. In fact, the recitals in Ex.P5 would clearly show that though the Hindu Undivided Joint Family comprising of the parties herein, owned the land and building at Old No.453, New No.829, Poonamallee High Road, Kilpauk, Madras-10, more particularly described in Schedule 'I' hereunder, the parties have already divided themselves and entered into Partnership arrangement to carry on business of a nursing home at Old No.453, New No.829, P.H.Road, Kilpauk, Madras-10, in accordance with the terms of the Partnership Deed dated 10-4-1972 and the land and building described in Schedule 'I' constituted an asset of the said firm in which business is continued and that the plots described in Schedules II, III and IV are not required by the firm for its business and hence, the parties herein have agreed to divide the same by metes and bounds by dividing and allotting the plots described as plots "A", "B" and "E" to be held by the respective allottees as absolute owners, etc. The recitals in the documents cannot be read in an isolated manner and have to be read wholly and as far as the intention of the parties is concerned, in the pleadings also, nobody has stated that the suit property is Hindu Undivided Joint Family property after Ex.P4 partnership deed and Ex.P5 partition deed and even after the death of the father of the parties, it continued till the Hindu Succession (Amendment) Act, 2005 came into force. Under these circumstances, this Court holds that the suit schedule property treated to be the asset of the partnership firm and the first point is answered accordingly.

21. Point (ii): As mentioned already, a reading of the documentary evidence as well as the intention and the conduct of the parties in the whole

pleadings would clearly show that the property constituted only as an asset of the partnership firm for running the business. Once the property was thrown into the stocks of the firm, the recitals in the partnership deed executed between the father and two sons also clearly show that the death, insolvency or retirement of partners shall not dissolve the partnership and it shall be carried on by the remaining partners on such terms and conditions as may be agreed upon; that the capital of the partnership is the assets and liabilities of the nursing home hitherto run by the Hindu Undivided Family which has been divided and credited equally in the capital account of each of the partners in the firm's books; that the accounts of the firm shall be closed on the 31st March each year. Subsequently, after the death of the father, the appellant and the first respondent entered into a partnership at will on 06.01.2003. Therefore, at best, rendition of accounts will be only from 06.01.2003 and not before that. In this case, as held already, once the suit schedule property is treated as the property of the firm and lost the character of Hindu Undivided Joint Family property much prior to the State and Central Amendments brought in the Hindu Succession Act favouring the daughter to receive a share as a co-parcener on par with the sons in the estate of the father, the said amendments will not enure to the benefit of the second respondent, since in the year 1972 itself, partnership firm was constituted and the subject property was treated as partnership property and divided the share amongst the father and two sons equally and in the year 1980, during the lifetime of the father, certain extent of property were divided amongst themselves, leaving the remaining extent of 11 grounds and odd continuing to be the property of the partnership firm. Thereafter, after the execution of Ex.P10, the appellant and the first respondent alone continued as partners at will. However, there is no evidence to show that on the death of the father, the father's share was divided and given to his legal heirs and thus the second point is answered accordingly.

22. One of the arguments advanced was that the suit for partition will not lie in respect of the property brought into the stocks of the partnership firm, which remains unregistered. In this regard, the commentary on Law of Partnership would show that to bring in separate properties of partners into the partnership stock, a written document and its registration is not necessary, either under the Indian Contract Act, 1872, or under the Indian Partnership Act, 1932. Separate properties become properties of the partnership firm as soon as the partners intend to so bring them and treat them as such, and this is not prohibited by the Transfer of Property Act, 1882, or by the Indian Registration Act, 1908. By virtue of Section 14 of the Indian Partnership Act, 1932, property can be thrown into the partnership stock without any formal document and it becomes the property of the firm. What will be the ultimate fate of such property on the dissolution of the partnership, will not affect the nature of the

transaction at the time when such property is brought to the stock of the partnership. In this case, as mentioned already, when the recitals and the intention of the partners therein while executing Exhibits P4 & P5 in the years 1972 & 1980 are very clear to treat the suit schedule property as the property of the partnership firm and not as the joint property of the Hindu Undivided Family coupled with the fact that the first respondent/plaintiff also sought for partitioning the suit schedule property showing as partnership property and to allot his 4/9th share in the same and the appellant/first defendant also admitted in his reply dated 14.06.2004, Ex.P14 that the plaintiff and himself are entitled to 2/3rd share each and the second defendant is entitled to a moiety of the estate of the father of the parties, the share of the father being 1/3rd in the partnership business and that the second defendant also gave her no objection in the written statement for decreeing the suit and to allot her 1/9th share, they cannot at this stage take a stand that the suit for partition is not maintainable when the property was thrown into the stocks of the partnership firm.

23. Further, the second respondent/second defendant has not come to the witness box and let in evidence to prove that the suit property continued to be held as joint family property and even in her written statement, she has stated that she has no objection to the suit being decreed as prayed for by the plaintiff and allot her 1/9th share. Therefore, the respondents are conscious of the fact

that the suit property is only partnership property and not Hindu Undivided Joint Family property.

24. Equally there is no quarrel with the proposition of law laid down by the Hon'ble Supreme Court in the decisions relied upon by the learned Senior Counsel/counsel for the parties in support of their respective contentions. However, considering the facts and circumstances and the conclusions reached by this Court in the preceding paragraphs, the said judgments are not applicable to the present case.

25. In the light of the above, this appeal is partly allowed and clause (a) in paragraph 38 of the judgment and decree passed by the learned single Judge stands modified and the suit is decreed in part with a preliminary decree declaring that the plaintiff and the first defendant are entitled for allotment of $4/9^{th}$ share each and that the second defendant is entitled for allotment of 1/9th share, on payment of necessary Court fee. Since during the pendency of appeal the first respondent/plaintiff died, his legal representatives are entitled to his share. So far as clause (b) is concerned, the time granted to the first defendant to render the accounts relating to the affairs of the firm from 06.01.2003 till the date of the decree, is extended by six months from today. The other portion of the judgment and decree remain unaltered. Consequently, the connected CMPs

are closed. Considering the nature of the suit and relationship of the parties, there shall be no order as to costs.

(P.VELMURUGAN J.)   (K.GOVINDARAJAN THILAKAVADI J.)
06-08-2026

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

ss

To

1. The Sub Assistant Registrar (O.S.)
   Madras High Court, Chennai

P.VELMURUGAN J.
AND
K.GOVINDARAJAN THILAKAVADI J.

SS

Judgment in OSA No. 253 of 2020

06-08-2026