

**IN THE COURT OF PRINCIPAL DISTRICT MUNSIF
PADMANABHAPURAM.**

**Present: Thiru.R.Karthikeyan, B.A., B.L.,(Hons.)
Principal District Munsif.**

Monday, the 13th day of July 2026

O.S.No. 141 /2023

CNR.No.TNKK08-000251-2023

1.Thanga Bai
2.Wilbin Babu

.... Plaintiffs

/ Vs /

Thangaraj

... Defendant

This suit is coming before me for final hearing in the presence of Mr.Anand A.Wilson, learned counsel for the Plaintiff and Mr. T.Michael Ratheesh, Learned counsel for the defendant. Upon hearing the both side counsel and on perusal of records having stood over for consideration till this day, this court delivers the following :-

JUDGMENT

Suit is filed for declaration declaring the sale deed No.935/1989 dated 24.07.1989 registered before Karungal Sub Registrar's Office infavour of the defendant by the 1st plaintiff husband's father of the 2nd plaintiffs Late.Thankappan as null and void and other reliefs.

2. THE AVERMENTS IN THE PLAINT IN BRIEF :-

i) The plaint schedule property is having an extent of 9.7 cents in Re.sy.No.80/14 , originally belonged to one Thangayan. The husband of 1st plaintiff and the father of 2nd plaintiff Late.Thangappan was in possession over an extent of 9.700 cent in RE.Sy.No.80/14 . This property is the ancestral property of late .Thangappan. The plaintiffs are doing cultivation in the plaint schedule property from the date of oral family arrangement. The above said property originally belonged to Thangayyan grand father of the 2nd plaintiff. He died intestate as a Hindu. As per the oral family arrangement the said property devolves upon the said Thankappn and his family members. Now, the plaintiffs and 1st plaintiffs sons are in possession and enjoyment over the plaint schedule property from the date of death of the said Late. Thangappan. The said Thangappan died intestate on 11.11.1994 leaving behind the plaintiffs and T.Stalbin, T.Lenin and T.Darwin.

ii) The 1st plaintiff's Husband Late Thangappan has got no absolute right over the plaint schedule property based on the oral arrangement. The plaintiffs are in joint possession and they are equally to get share over the suit property. The plaintiffs and the sons of plaintiff's husband Thangappan decided to settle the properties inherited by the 1st plaintiffs' husband and

father of the 2nd plaintiff and made arrangements to execute the partition deed in the month of 03.06.2023. The 1st plaintiff's husband and father of 2nd plaintiffs fraudulently executed a sale deed No.935/1989 registered before Karungal Sub Registrar's office in respect of suit property from the 1st plaintiff's husband without giving any valid sale consideration. Even after the sale deed the said plot was under the control and enjoyment of the plaintiffs and all the sons of Thangappan and they are taking the yield from the coconut and other trees. The defendant never enjoyed or possessed the above said plot from the date of sale deed and it is under the control of plaintiffs and the family members. The document is a sham document. The said sale deed will not bind the plaintiff and other sons of the deceased Thangappan. Therefore the plaintiffs issued notice dated 03.10.2023 to the defendant and directed to execute a sale deed in respect of above said property 9.700 cents in Re-survey No.80/14A2 infavour of plaintiffs and the sons the defendant received the notice and sent a vague reply to the plaintiff and his counsel.

iii) The sale transaction is sham, nominal and fraudulent and it is not binding on the plaintiffs. The plaintiffs and the family members are not parties to the said sale deed. Therefore it is highly essential to the plaintiffs to set aside the sale deed No.935/1989 registered before the Karungal Sub

Registrar office. Otherwise the plaintiffs and other family members may not execute any partition deed. Hence this suit.

3. BRIEF OF WRITTEN STATEMENT FILED BY THE DEFENDANT IS AS FOLLOWS :-

i) The plaintiffs were never doing cultivation in the plaint schedule property. The defendant purchased the property in 1989 and since then the defendant has been cultivating and enjoying the property without any interruption till this suit was filed. The plaintiffs are not in possession and enjoyment of the property. The defendant only planted all these trees except seven coconut seedlings of which three plants are not there now. The defendant purchased the suit property on 24.07.1989 from late Mr.Thankappan and effected mutation and has been paying land revenue taxes till now. At the time of purchase the children of the seller and the 1st plaintiff are minors and below eight year in age. For the purpose of meeting family expenses including Medical expenses, the late Mr.Thankappan sold the property for proper and valid sale consideration. The defendant used to come from three kilometers of his house of the suit property which is near the house of the plaintiffs. Thankappan Died on 11.11.1994 i.e., after 5 years of the sale of the property. Either anybody disturbed the peaceful possession and enjoyment of the suit property for the past 34 years even after the

children of him and the 1st plaintiff became majors. They wanted to grab the land and so they tried to trespass into the suit property.

ii) The plaintiffs and others sons have no manner of any right over the suit property after 34 years of peaceful possession and enjoyment of the defendant. The plaintiffs issued a notice on 03.10.2023. The allegations recited in that notice are not correct. They sent the notice for the purpose of grabbing the land. The sale transaction is not sham, nominal and fraudulent. It is absolutely valid one and no other can claim any right over the schedule property. The sale deed cannot be set aside. The plaintiffs and the family members need not be parties as the said executor. Even otherwise non other can claim any right over the suit property absolutely belonging to the defendant. After sending the suit notice with the support of two brothers and another who are not in the party array of the suit. The 2nd plaintiff removed the boundary stones, threatened the defendant and put a banner with the wordings “சொத்து விற்பனைக்கு அல்ல கேஸ் போட்டிருக்கு 7598079727” in the suit property and other work materials. They must be removed by the plaintiffs. The defendant sent a suit notice on 31.10.2023 to the 2nd plaintiff to stop threatening the defendant to put back the boundary stones and remove the Banner etc., and seeking a remedy of damage, if not done. Another petition for mandatory injunction is filed along with this written

statement for the purpose. The suit is bad for non joinder of necessary parties. The seller or the executor already alienated certain other properties to others and that properties are not included nor the purchasers impleaded in this suit. The suit is barred by limitation as per the Limitation Act of our land. The defendant wanted to put up a house building for his son. At the time of starting the pre - works the plaintiffs interfered and did all these things to stop . Hence, this suit is liable to be dismissed.

4. SETTLED ISSUES :-

On the basis of pleadings on both sides, the following issues were framed.

1. Whether the plaintiff is entitled for the relief of declaration of sale deed No.935/1989 dated 24.07.1989 as null and void as prayed?
2. To what other reliefs plaintiff is entitled?

5. EVIDENCES :-

To prove the case, on the side of plaintiff's, the 2nd plaintiff examined himself as PW.1 and Ex. A1 to Ex.A4 were marked. On the side of defendant's, defendant was examined as Dw.1 and Ex.B1 to Ex.B5 were marked.

The decision submitted by the Defendant counsel :**2017-1-L.W.697, M.Perumal & others Vs. Vijayakumari & others:-**

Held that “ 1st plaintiff sold 4 cents of land, she has no right to file suit for entire property of 25 cents for declaring the plaintiff is owner of entire 25 cents of land para 24 1st respondent/1st plaintiff has played fraud on the court that out of 25 cents, the 1st respondent/1st plaintiff had sold 4 cents of land i.e. 1681 sq.feet of land to the 1st petitioner/1st defendant. Then how he has filed the suit for entire property consisting of 25 cents as if he was the owner of the entire 25 cents of property. Therefore that itself shows the malafide intention and fraud played on the court by the plaintiffs”.

6. WITH REGARD TO AN ISSUE NO.1 :-

Both side argued. Oral and documentary evidences perused carefully.

Whether the plaintiff is entitled for the relief of declaration of sale deed No.935/1989 dated 24.07.1989 as null and void as prayed?

i) The Pw1 reiterated all the contentions set out in the plaint and sought a relief of declaration and other reliefs.

ii) It is the settled principle of law that when the plaintiffs seeks for the relief of declaration the initial burden of proof lies upon plaintiffs. Here in this case the main contention of the plaintiffs is that the plaint schedule property was undivided family property of the plaintiff's deceased husband

and without effecting the partition plaintiff's deceased husband Thankappan executed sale deed infavour of the defendant for entire plaint schedule property and hence the sale deed executed in the year 1989 infavour of defendant is to be declared as null and void. To support the plaintiffs contention 2nd plaintiff examined himself as PW.1 and marked Ex.A1 to Ex.A4. Ex.A1 is the disputed sale deed executed by Thankappan infavour of this defendant for the plaint schedule property. Ex.A2 and Ex.A3 suit notice and reply notice were adduced. On the other hand defendant denies the contention of the plaintiffs and submits that 1st plaintiff's husband Thankappan executed the sale deed in the year 1989 for valid consideration and defendant was in possession and enjoyment over the plaint schedule property till date without interruption of the plaintiff and prays to dismiss this suit.

iii) To support the defendant contention, defendant examined himself as DW.1 and marked Ex.B1 to Ex.B5. Ex.B1 and Ex.B2 are the revenue records infavour of the defendant which was obtained on 07.02.2024 and patta is online copy. Ex.B1 was obtained only after the filing of this suit, hence Ex.B1 cannot be relied. Even if Ex.B2, Ex.B4, Ex.B5 revenue records was taken in to consideration since the title of defendant itself is disputed revenue records cannot be relied and moreover it is settled principle of law that revenue records will not confer any title. Defendant's

submits defendant was in possession from the year 1989 from the date of execution of the sale deed till date and bears title however defendant have not filed any counterclaim.

iv) plaintiffs submit that plaintiff came to knowledge about the sale deed only in the year 2023 and suit notice was issued after knowing the sale deed was executed in the year 1989 for the plaint schedule property by Thankappan infavour of defendant Thankaraj which is undivided family property. DW.1 itself have admitted in his cross examination as follows “ 1-வது வாதியின் கணவரின் குடும்பத்தை பற்றி எனக்கு தெரியும் என்றால் திருமணத்திற்கு பிறகு தெரியும். வழக்கு பட்டிகை சொத்தும், வேறு சொத்துக்களும் 1-வது வாதியின் கணவருக்கு பூர்வீக சொத்தாகும் என்றால் சரிதான். தங்கப்பனின் அப்பாவின் பெயர் தங்கையன் என்றால் அவ்வாறு தான் சொல்வார்கள்”.

Hence its clearly admitted by Dw1 that Plaint schedule property is the family property which was not partitioned. Based on the admission of DW.1 it is clear that plaint schedule property is the family property. It is also clear from the evidences that plaintiffs ancestral were Hindus. Thus defendant have admitted that the plaint schedule property is the undivided family property however claims right through the sale deed executed in the year 1989. Defendant have not seeked for relief of declaration in counter

claim even after his title was disputed. Though defendant have disputed that plaintiff was very well known about the possession and enjoyment of the plaint schedule property by this defendant and have filed this suit only in the year 2023 no reliable evidence was adduced and failed to prove it. It is the burden of the defendant to prove that plaintiff have knowledge about the possession and enjoyment of defendant from 1989 but except defendant no other independent witness was examined. Hence period of limitation for declaration relief shall be taken into consideration from 2023 only. Though Ex.B3 the sale deed was a registered sale deed and defendant itself have admitted that the property executed by Thankappan infavour of this defendant is un exfamily property. However defendant have not clarified and proved that the property sold in Ex.B3 is not family property. Defendant have also failed to plead and prove that suit property was self acquired property of Thankappan nor his absolute property.

v) As discussed above based on the evidence adduced on both sides it is clear that the plaint schedule property is the undivided family property and Thankappan is entitled only to the extent of his share to execute the sale deed and not more than his share. Since the plaint schedule property is a family property and the shares need to be devolved to the legal heirs of the Thankappan equally. However without effecting the partition Thankappan

have executed the sale deed in the year 1989 for the entire plaint schedule property. It is settled principle of law that no one can pass a better title than what he possess. The decision relied by defendant counsel does not applies to the case in hand as the cited decision is relating to declaration of entire 25 cents property even after the 4 cents was sold by the plaintiff and by concealing the sold 4 cents suit was filed for entire property of 25 cents. However here in this case suit is for declaration of sale deed executed for entire family property which was undivided the circumstance of both cases varies and hence the decision relied by defendant counsel could not be relied. Here in this case the deceased Thankappan can execute sale deed only to the extent of the share of the family property and not beyond it. Hence, the sale deed executed by the Thankappan infavour of this defendant in the year 1989 for the entire plaint schedule property beyond his share cannot be upheld and hence this court is considered view that plaintiff is entitled for the relief of declaration leaving the extent of thankappan share alone which was sold to the defendant as prayed. Accordingly issue No.1 is partly answered infavour of plaintiffs.

7. ON ISSUE NO. 2:-

To what other reliefs plaintiff is entitled?

In the light of above findings and decisions on the preceding issues,

this court is of considered view that plaintiff is not entitled for any other reliefs in this suit.

8. RESULT :-

In the result, Considering the fact and circumstances of the case, after determination of above issues, in the interest of justice, this suit is Partly decreed,

i) by granting a decree of declaration declaring the sale deed No.935/1989 dated 24.07.1989 registered before Karungal Sub Registrar's Office infavour of the defendant by the 1st plaintiff husband's and father of the 2nd plaintiffs Late.Thankappan as null and void except the share of deceased Thankappan sold to the defendant. No costs.

Dictated to the steno-typist and typed by her in computer, corrected and pronounced by me in open court, on this 13th day of July 2026.

Principal District Munsif,
Padmanabhapuram.

Plaintiff 's side witnesses :-

1. P.W.1. - Mr. Wilbin Babu

Defendant's side witnesses :-

1. D.W.1. - Mr.Thankaraj

Plaintiff's side Documents :-

1. Ex.A.1	-	24.07.1989	-	Certified copy of sale deed No.935/1989
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2. Ex.A.2	-	03.10.2023	-	Copy of suit notice
3. Ex.A.3	-	09.10.2023	-	Copy of reply notice
4. Ex.A.4	-	--	-	Copy of caveat petition

Defendant's side Documents

1. Ex.B.1	-	--	-	Original Adankal
2. Ex.B.2	-	01.12.2025	-	Online patta
3. Ex.B.3	-	24.07.1989	-	Certified copy of sale deed No.935/1989
4. Ex.B.4	-	10.06.2025	-	Original land tax receipt
5. Ex.B.5	-	01.12.2025	-	Online patta

PDM,
Padmanabhapuram.

PDMC, Padmanabhapuram.
O.S.No. 141/ 2023
(CNR.No.TNKK08-000251 -2023)
Draft/Fair Judgment.
Date: 13.07.2026