



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17-02-2026

CORAM

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

**SA No. 40 of 2020
and CMP.No.901 of 2020**

Balaji

S/o. Narayanasamy, Bodinaickenpalayam Village,
Chettikuppam Post, Gudiyattam Tk, Vellore Dist.

..Appellant(s)

Vs

1. G.Murali

S/o. Govindasamy, Resi At Kakkathoppu
Village, Chettikuppam Post, Gudiyattam Tk,
Vellore Dist.

2. G.Vijayakumar

S/o. Govindasamy, Resi At Kakkathoppu
Village, Chettikuppam Post, Gudiyattam Tk,
Vellore Dist.

3. Govindasamy

S/o.Dharmaia Naidu, Resi At Kakkathoppu
Village, Chettikuppam Post, Gudiyattam Tk,
Vellore Dist.

4. Rajendran

S/o. Gopal, Bodinaickenpalayam Village,
Chettikuppam Post, Gudiyattam Tk, Vellore
Dist.

..Respondent(s)

Second Appeal filed under Section 100 CPC to set Aside the Decree and Judgement made in AS No.8 of 2016 on the file of The Subordinate Judge, Gudiyattam, Vellore District, dated 25.11.2019 confirming the Decree and Judgement made in OS No.90 of 2007 on the file of The District Munsif, Gudiyattam, Vellore District, dated 29.04.2016.



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For Appellant(s): MR.K.A.Ravindran

For Respondent(s): MR.K.GОВI GANESAN
FOR RR1 AND 2
R3 AND R4 - GIVENUP

JUDGMENT

Challenging the findings of the courts below, this Second Appeal is preferred by the 2nd defendant/appellant.

2. Before the trial court, the respondents 1 and 2 herein are the plaintiffs. They filed suit for partition claiming 2/3rd share in the 3 items of the suit properties against 3 defendants.

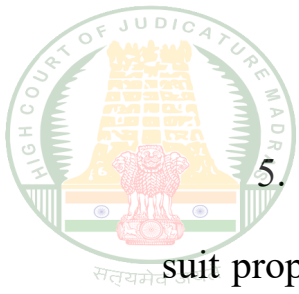
3. The brief facts of the case in O.S.No.90 of 2007 is as follows:-

The schedule mentioned properties are Joint Hindu Family properties. It is stated that the 1st item of suit property is ancestral property derived from their father. The 1st defendant, who is the father of the plaintiffs, was cultivating the suit property, and out of the income accrued therefrom, he purchased the 2nd item of the suit properties from his brother. The 3rd item of the suit properties are the ancestral properties of the 1st defendant and the plaintiffs and all were enjoying it as joint family property. While so,



their father sold the entire suit properties to the 2nd and 3rd defendants as if it is a self acquired property. So the plaintiffs being the children of the 1st defendant has come forward with the suit claiming 2/3rd share in the suit properties against their father/1st defendant, and purchasers 2nd and 3rd defendants.

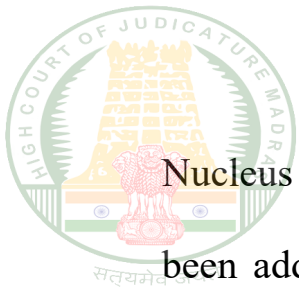
4. Before the trial court, the purchasers 2nd and 3rd defendants contended the suit claim. The 2nd defendant contended that he purchased the 2nd item of suit property for valid sale consideration and is a bonafide purchaser and also contended that the 1st defendant borrowed loan to buy 2nd item of suit property from his brother to avoid 3rd party entering into the lands as agriculture failed and the 1st defendant obtained further loans not only to pay interest for the earlier loans but also for family necessity and to repay the loan, he was under the dire necessity of money, therefore, he sold the 2nd item of property. Since the property was sold for family necessity, it will bind the plaintiffs who were 1st defendant's children therefore, he prayed for dismissal of the suit. Further the 2nd defendant contended that the 2nd item of property is concerned, it is self acquired property of the 1st defendant and he is entitled to sell the same as absolute owner and the same cannot be challenged by the plaintiffs.



5. The 3rd defendant purchaser also contended that he purchased the suit property from the 1st defendant as well as his brothers Krishnamurthy and Pandu by way of three different registered sale deeds dated 21.02.2000 and those properties were allotted to vendors by partition deed dated 05.12.1984 which cannot be challenged by the plaintiffs.

6. Before the trial court, the 1st defendant remained exparte. The 1st plaintiff was examined as P.W.1 and P.Ws.2 to P.W.4 were examined on the side of the plaintiffs. Exhibits A.1 to A.5 were marked on the side of plaintiffs. On the side of defendants, D.W.1 -2nd defendant was examined and D.W.2 Yoganandham , 3rd party was examined. Exhibits B.1 to B.6 were marked.

7. After letting in oral and documentary evidence and considering the submissions, the trial Judge held that the 1st item of suit property is ancestral property allotted to the 1st defendant-plaintiffs' father through partition deed dated 05.12.1984. Though the plaintiffs were born subsequently, the property retains its character as ancestral in nature. Further, the Trial Judge found that the plaintiffs have not proved that the 2nd item of the suit property was purchased out of the Joint Family



Nucleus by the 1st defendant as *kartha* of the family. No evidence has been adduced to substantiate such a claim. The trial Judge held that 2nd item of the suit property is self acquired property of the 1st defendant. In respect of 3rd item of property, pending suit proceedings, the plaintiffs given up their claim. Therefore, the suit is dismissed with respect to 3rd item of suit property. Therefore, the suit was dismissed with respect to the 2nd and 3rd item of the suit schedule properties. The finding in respect of 1st item of suit schedule property is that the trial Judge granted 2/3rd share to the plaintiffs by metes and bounds.

8. Challenging the said finding, A.S.No.8 of 2016 has been filed before the Subordinate Judge, Gudiyattam, Vellore District.

9. The 1st appellate Judge, analysed the facts independently and framed separate points for consideration and held that findings of the trial Judge requires no interference.

10. According to the plaintiffs, in so far as 2nd item of suit schedule property is concerned, the same is purchased out of Joint Family Nucleus and the 2nd item of property retains its ancestral nature and therefore, the



plaintiffs are entitled to 2/3rd share.

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11. The learned counsel for the appellant/2nd defendant contends that the courts below failed to properly appreciate the fact that the 1st defendant, father of the plaintiffs, had alienated the property as *kartha* of the family for joint family necessity, more particularly to settle the agricultural loan borrowed by him from the Cooperative Land Development Bank. It is submitted that such necessity has been proved, but the courts below erroneously held that the 1st item of the property is ancestral in nature. Further, the learned counsel argues that the courts below failed to take note of the evidence adduced through D.W.1, the appellant, and that the evidence of D.W.4 was erroneously appreciated in respect of the waiver of the land, since the courts below did not consider the fact that the sale made by the 1st defendant was prior to the waiver.

It is further contended that the courts below erred in dealing with the suit properties by ignoring the discharge of antecedent debts through the sale of the property, and without applying the settled legal principles, partly decreed the suit, which is erroneous.

12. The learned counsel for the plaintiffs/respondents 1 and 2



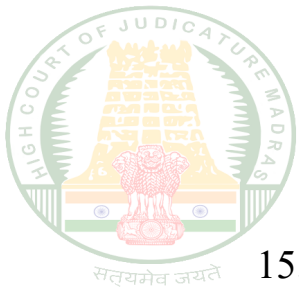
submits that there is no proof on the side of the appellant to substantiate their contention that loans were borrowed for joint family necessity. The recitals of the sale deed does not specify that the properties were sold to satisfy the joint family needs and the same was rightly appreciated by the courts below and the findings are sustainable and the Second Appeal is to be dismissed.

13. This second appeal has been admitted on the following substantial questions of law.

1) Whether the Courts below are right in decreeing the 1st item of the suit properties, when the plaintiffs' father -1st defendant/1st respondent herein has sold the said properties under Ex.A.3 on 19.10.2005 to discharge mortgage and the loan which was borrowed as a Karta of the Joint Family including the Minors (Plaintiffs)?

2) Whether the Courts below are right in decreeing the Partition of 1st item of the suit properties, which was sold in the year 2005 prior to waiver notification while it was issued in the year 2006 and the waiver does not affect the concluded sale?

14. This court considered the submissions of both sides and perused the records.



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15. The appellant herein is the 2nd defendant in the suit and also purchaser of the item 1 and 2 of the suit properties. Respondents 1 and 2 / plaintiffs claim that items 1 and 2 of suit schedule properties are ancestral properties and claiming 2/3rd share. Admittedly item 1 was allotted to the father of the plaintiff in the partition held in the year 5.12.1984 which is an undisputed fact; thereafter, the 1st defendant purchased 2nd and 3rd item of suit properties through valid consideration.

15. Before the trial court, no evidence is let in on the side of the plaintiffs that out of Joint family Nucleus, suit item 2 and 3 was purchased by the father. Therefore, the court below rightly held that item 2 and 3 could not be treated as Joint Family Nucleus. Further, the plaintiffs given up their claim in respect of suit item 3 property and accordingly suit was dismissed as against 3rd item of suit property. Against which, the plaintiffs not filed any appeal. However, trial court held that item 1 was ancestral property and granted 2/3rd share.

16. Admittedly, plaintiffs are having right over the suit properties when the suit is filed. Though they were not born in the family at the time



of partition of property, immediately after their birth, the share of the ancestor properties devolves, therefore, they are entitled for 2/3rd share in the 2nd and 3rd item of suit properties which were purchased out of the Hindu Joint Family Nucleus 1st item of property.

17. The 1st defendant is the Hindu Joint Family Manager, so father of the plaintiffs borrowed loan from Land Development Bank. To discharge the said loan, he sold the property but the sale deed relied upon by him Ex.A.2 does not contain any such recitals. If at all family necessity arose, those recitals bound to form part of the documents. To accept D.W.1 oral evidence, there is no proof. However, 1st item was sold by the 1st defendant as a kartha of the family to discharge the family necessity. To that effect, the findings rendered by the trial court does not require any interference. The 1st defendant is entitled to only 1/3rd share and he is not entitled to entire share. Therefore, the findings rendered by the trial court requires no interference. The plaintiffs are entitled to 2/3rd share in the 1st item and the remaining items, respondents 1 and 2/plaintiffs are entitled to 33 cents each. Suit property purchaser is also entitled to 33 cents each. Remaining share, if any goes to the plaintiffs. Therefore, if any final decree application is filed by the plaintiffs, trial court is directed to dispose of the



same within 3 months.

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18. This Second appeal is allowed to the extent indicated above. The substantial questions of law are answered in favour of the appellant. No costs. Consequently, connected miscellaneous petition is closed.

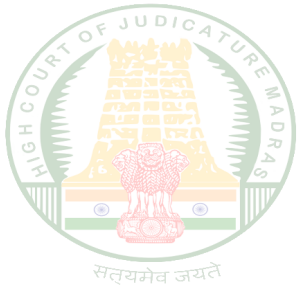
17-02-2026

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

NVSRI

To

- 1.The Subordinate Judge, Gudiyattam, Vellore District,
2. The District Munsif, Gudiyattam, Vellore District.
- 3.The Section Officer, V.R.Section, High Court, Madras.



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T.V.THAMILSELVI, J.

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