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SA No. 765 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17-08-2026

CORAM:

THE HONOURABLE MR.JUSTICE P. DHANABAL

SA No. 765 of 2007

Elumalai Naicker

.. Appellant

Vs.

1. Kali Naicker

2. Balaraman

3. Subramani

4. Pandiyan

5. Gunasekaran

..Respondents

Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 12.12.2006 made in A.S.No.139 of 2005 on the file of the Principal Subordinate Court, Chengalpattu, reversing the judgment and decree dated 03.10.2005 made in O.S.No.32 of 2005 on the file of the District Munsif Court, Chengalpattu.

For appellant(s):

M/s.V.Srimathi

For respondent(s):

(R-1 - Second Appeal dismissed against R-1 - vide Court order dated 11.03.2025)

R-2, R-3, R.4 and R-5 -

Notice served - No appearance



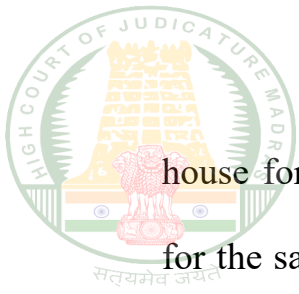
JUDGMENT

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This Second Appeal has been preferred as against the judgment and decree passed by the Principal Subordinate Judge, Chengalpattu in A.S.No.139 of 2005, dated 12.12.2006.

2. The appellant is the plaintiff, who filed the suit before the trial Court in O.S.No.32 of 2005 on the file of the District Munsif, Chengalpattu for the relief of the partition and for permanent injunction and the said suit was decreed on 03.10.2005. On appeal, the first appellate Court allowed the appeal and the judgment and decree of the trial Court was set aside and the suit was dismissed. Aggrieved by the judgment and decree of the first appellate Court, the plaintiff has preferred this Second Appeal.

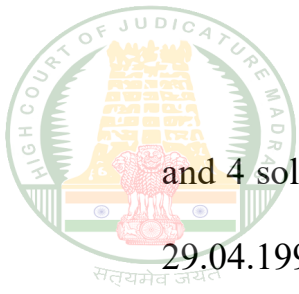
3. The case of the plaintiff before the trial Court is that the suit A-schedule property is undivided property, which belongs to the plaintiffs and the defendants 1 to 4 and the plaintiff is the eldest brother and Kartha of the family and the defendants 3 and 4 are the son of the second defendant. As such, the plaintiff and the defendants 1 and 2 are each entitled to 0.7 cents in the suit A-schedule property. The suit - B schedule property is the house situated on the Western extremity of the suit A-schedule property, for which a portion of it got dilapidated and the first defendant has been residing in a portion of the family



house for the sake of convenience and he also obtained electricity connection for the said portion. The plaintiff is aged about 91 years and has been residing in Chennai temporarily for taking his treatment for his ailment.

3.1. While so, the second defendant, in collusion and in connivance with his sons, 4th and 5th defendants, purported to have executed a sale deed on 19.07.2001 as if the Eastern 0.04 acre in the suit A-schedule property, fell to the share of the second defendant and the said document is self-served document and it is only sham and nominal. There was no division among the plaintiffs and his brother. The property purchased by the fifth defendant is shown as B-schedule property, since A-schedule property is undivided property, the portion conveyed to the fifth defendant under the sham sale deed, is lying vacant. Therefore, the plaintiff issued notice dated 19.07.2001 to the defendants and the fifth defendant attempted to put up construction, and therefore, the plaintiff has filed the suit.

4. The 5th defendant has filed written statement stating that the allegations contained in the plaint are denied as incorrect. Further, 20 years back, the plaintiff and defendants 1 and 2 had divided the suit property and other ancestral family properties equally and after division, they are enjoying their respective shares separately and therefore, the suit for partition is not maintainable. The plaintiffs have suppressed material facts and the defendants 2

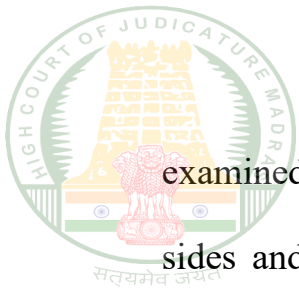


and 4 sold some extent of the suit property to the wife of the fifth defendant on 29.04.1994 and in that sale deed, it is clearly mentioned that the partition was effected and the fifth defendant purchased the suit B-schedule property for a valuable consideration from the second defendant and his sons, the third and fourth defendants through sale deed, dated 19.07.2001. From the date of purchase, the fifth defendant has been in possession and enjoyment of the B-schedule property. The plaintiff has not included some of the ancestral properties of the plaintiff and the defendants 1 to 3, and therefore, the suit is bad for partial partition and for non-joinder of necessary parties. The plaintiff is not in joint possession of the property and thereby payment of Court fee is not correct and therefore, the suit is liable to be dismissed.

5. Based on the above pleadings and after hearing both sides, the trial Court framed the following issues for trial:

- (i) Whether the plaintiff is entitled to partition of 1/3 hare in A-schedule property ?
- (ii) Whether the plaintiff is entitled to the relief of permanent injunction in respect of the B-schedule property ? and
- (iii) To what other relief the plaintiff is entitled to ?

6. Before the trial Court, on the side of the plaintiff, P.W.1 was examined and Exs.A-1 and A-2 were marked. On the side of the defendants, D.W.1 was



examined and Ex.D-1 was marked. Thereafter, the trial Court, after hearing both sides and after perusing the records, decreed the suit. Aggrieved by the said judgment and decree of the trial Court, the fifth defendant has preferred an appeal in A.S.No.139 of 2005 on the file of the Principal Subordinate Judge, Chengalpattu on various grounds.

7. The first appellate Court has framed the following points for determination:

(i) Whether there was already a partition between the plaintiff and defendants 1 and 2 and of the joint family properties including the suit property ?

(ii) Whether the plaintiff has made out a case for partition and separate possession of 1/3 share over the suit property ?

(iii) Whether the plaintiff is entitled to the relief of permanent injunction as prayed for in the suit ?

(iv) Whether the judgment and decree of the Courts below are liable to be set aside.

8. After perusing the records, the first appellate Court allowed the appeal and set aside the judgment and decree passed by the trial Court. Aggrieved by the said judgment and decree of the first appellate Court, the plaintiff has preferred the present Second Appeal.

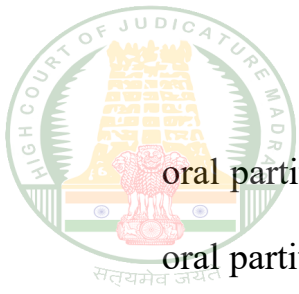


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9. Learned counsel for the appellant submitted that originally, the suit A-schedule property was the ancestral property of the plaintiff and defendants 1 and 2 and the plaintiff is entitled to 1/3 share and the defendants 1 and 2 are each entitled to 1/3 share. While so, when the plaintiff was not in station, taking advantage of his absence and also due to ill-health, the second defendant and his sons being the defendants 3 and 4, sold the property to the fifth defendant through sale deed dated 19.07.2001, as if the Eastern 0.04 acre in the suit A-schedule property, fell to the share of the second defendant. The said document is only sham and nominal and no partition has been effected in respect of the property and it was enjoyed as common property, and therefore, the plaintiff is having 1/3 share over the suit property.

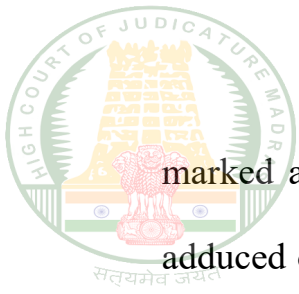
9.1. In order to prove the case of the plaintiff, P.W.1 was examined and Exs.A-1 and A-2 were marked and through the evidence, he has proved his case and the trial Court also, after considering the evidence adduced on both sides, correctly decreed the suit, since the fifth defendant has purchased the undivided share of the joint family, permanent injunction was also granted by the trial Court.

9.2. However, the first appellate Court, without considering the evidence of the plaintiff's side in proper perspective, had dismissed the suit as if there was



oral partition between the parties, and there is no evidence to prove the alleged oral partition and the trial Court failed to consider that A-schedule property is in joint possession of the family members and the sale deed in favour of the fifth defendant is not binding on the plaintiff's share. Though P.W.1 stated that the oral partitioning of the properties belonging to the joint family, no division was effected in respect of the A-schedule property, and therefore, the first appellate Court committed error in overlooking the documents -- Exs.A-1 and A-2, which clearly establishes the joint possession of the family members. The defendants have to prove the division of the properties between the family members, but failed to prove the same, and therefore, the judgment and decree passed by the trial Court and first appellate Court, are liable to be set aside.

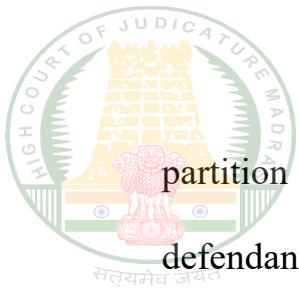
10. Learned counsel for the respondents submitted that the plaintiff and the defendants 1 and 2 were already orally partitioned their family properties and the Eastern side was allotted to the second defendant. Already, the defendants 2 to 4 sold the property to the wife of the fifth defendant through sale deed, dated 29.04.1999. As per the recitals of the said sale deed, the properties were already partitioned between the plaintiff and the defendants 1 and 2 and the plaintiff have not questioned the property purchased by the wife of fifth defendant through sale deed dated 29.04.1999. Further, with a view to harass the defendant, he filed the suit. In order to prove the case of the plaintiff, on the plaintiff's side P.Ws.1 and 2 were examined and the documents were



marked as Exs.A-1 and A-2. The trial Court failed to consider the evidence adduced on the defendant's side and erroneously held that no partition has been effected between the family members of the plaintiff and defendants 1 and 2 and failed to consider that already, D2 to D4 had sold the property in the year 1994 itself, wherein the partition between the family members, have been clearly stated. Therefore, the first appellate Court, after considering the evidence in proper perspective, correctly held that already there was an oral partition between the family members of the plaintiff and the defendants 1 and 2 and the same has been proved through the documents and the plaintiff also admitted in the cross-examination that already, the other family properties were partitioned and if so, the plaintiff has to prove that there is no partition of the suit properties, but the plaintiff failed to prove the same, and therefore, the first appellate Court correctly applied the law and there is no substantial question of law in this Second Appeal and therefore, the Second Appeal is liable to be dismissed.

11. This Court heard both sides and perused the records.

12. In this case, there is no dispute over the relationship between the plaintiff and the defendants 1 to 4, and the defendants 2 to 4 have sold the B-schedule property to the fifth defendant. The plaintiff filed the suit alleging that the entire A-schedule property is the joint family property and there is no

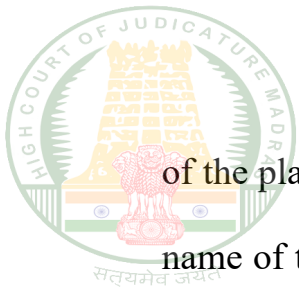


partition between the plaintiff and the defendants 1 and 2, however, the defendants 2 to 4 have sold the property that belonged to the joint family, and therefore filed the suit for partition.

13. The other defendants have not contested the case and the fifth defendant only contested the suit and the fifth defendant who is the purchaser of the property, pleaded that, already, there was an oral partition between the plaintiff and defendants 1 and 2 and in respect of the family properties, and as far as the A-schedule properties are concerned, the Eastern side was allotted to the second defendant and thereby, the second defendant and his sons sold the property to the fifth defendant through sale deed.

14. Further, the defendants 2 to 4 already sold a portion of the property to the fifth defendant's wife through sale deed, dated 29.04.1994, which is marked as Ex.B-1. In the said document, oral partition has been referred and the plaintiff also not raised any objection in respect of that property, and therefore, according to the defendants, the property was already divided between the family of the plaintiff and the defendants 1 and 2 and the present suit property was allotted to the second defendant and thereby, they have sold the property.

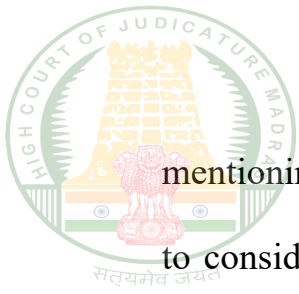
15. This Court also perused the records and the oral evidences. The plaintiff's side evidence shows that the Patta of the property stands in the name



of the plaintiff and it has been marked as Ex.A-2. Ex.A-1 is the sale deed in the name of the fifth defendant executed by the defendants 2 to 4 and Ex.B-1 is the sale deed executed by the defendants 2 to 4 in favour of the wife of the fifth defendant.

16. On a careful perusal of Exs.A-1 and B-1, it reveals that there was already an oral partition between the plaintiff and the defendants 1 and 2 and the plaintiff also, during cross-examination, admitted the oral division of properties of their family. The plaintiff and the defendants 1 and 2 were allotted the properties and therefore, from the evidence, it is clear that the family property of the plaintiff and defendants 1 and 2 have already been orally partitioned their family properties.

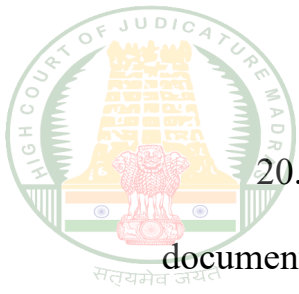
17. While so, it is the duty of the plaintiff to prove that as to why the suit A-schedule property was not partitioned, whereas the recitals of the sale deed, Ex.A-1 and Ex.B-1 shows that the properties were already partitioned between the plaintiff and defendants 1 and 2 and therefore, the defendants have proved that there was an oral partition between the family of the plaintiff and the defendants 1 and 2 and the plaintiff failed to prove that A-schedule was not partitioned. On this aspect, the trial Court, in the judgment, elaborately discussed the same and without considering the evidence and the sale deed in the name of the wife of the fifth defendant, executed by the defendants 2 to 4 by



mentioning the oral partition between them. Further, the trial Court also failed to consider the evidence adduced on the side of defendants and the admission made by P.W.1 through cross-examination about the partition, and decreed the suit as if the properties have not been divided between the parties. Further, the first appellate Court in the judgment, had elaborately discussed the evidences adduced on both sides and relied upon the oral evidence of P.W.1 and came to conclude that the plaintiff and defendants 1 and 2 had orally partition their properties.

18. Further, the recitals in Exs.A-1 and B-1 show that there was an oral partition and the property of the first defendant has been described as one of the four boundaries. In Ex.A-1 also the share of the second defendant has been mentioned as one of the boundaries to the property, and therefore, from Exs.A-1 and B-1, it is clear that A-schedule properties have been partitioned between the plaintiff and the defendants 1 and 2.

19. Therefore, after considering the oral and documentary evidence and also as per the admission made by P.W.1 in cross-examination, the first appellate Court correctly came to the conclusion that the properties are not joint family properties and the properties were already partitioned between the plaintiff and the defendants 1 and 2.



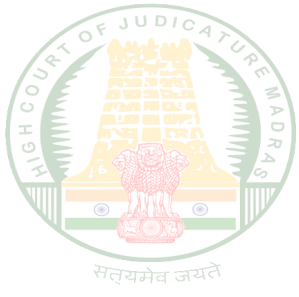
20. The above findings of the first appellate Court are based on oral and documentary evidences adduced on both sides, and therefore, the well-reasoned judgment needs no interference. There is no illegality or perversity in the judgment and decree passed by the first appellate Court, and therefore, the Second Appeal has no merits. This Court also perused the entire materials available on record and also the grounds of appeal. On a careful perusal, in this appeal, no substantial question of law is involved in the case on hand, and thereby, the Second Appeal has no merits and deserves to be dismissed. Accordingly, the Second Appeal is dismissed. There shall be no order as to costs.

17-08-2026

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

To

1. The Principal Subordinate Judge, Chengalpattu.
2. The District Munsif, Pappireddipatti. Chengalpattu District.
3. The Record Keeper, V.R.Section, High Court, Madras.



WEB COPY

SA No. 765 of 2



P.DHANABAL, J

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SA.No.765 of 2007

17-08-2026