



WEB COPY

SA No. 826 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05-08-2026

CORAM

THE HON'BLE MR.JUSTICE P. DHANABAL

**SA No. 826 of 2011
and M.P. No.1 of 2011**

1. Natarayan [died] S/o Perumal Gounder
2. Laxmanan S/o Perumal Gounder Gounder
at Nallathangiyur Koneripatti Village,
Mettankadu Post, Sankari Taluk.
3. Marimuthu S/o. Late Natarayan,
at Nallathangiyur, Koneripatti Village ,
Mettankadu Post, Sankari Taluk.
4. Devaraj, S/o. Late Natarayan,
At Nallathangiyur, Koneripatti Village ,
Mettankadu Post , Sankari Taluk.
[As First Appellant died, the Appellants 3 and 4
have been brought on record as legal
representatives of the deceased A1 Natarayan
vide Order dated 05/01/2026 made in CMPs
32125, 32130, 32131/2025]

..Appellant(s)

Vs

1. Kaveri S/o Perumal Gounder,
at Nallathangiyur Koneripatti Village
Mettankadu Post, Sankari Taluk.
2. Srinivasan S/o Perumal Gounder
at Nallathangiyur Koneripatti Village
Mettankadu Post, Sankari Taluk.
3. Mohan S/o Perumal Gounder,
at Nallathangiyur Koneripatti Village
Mettankadu Post, Sankari Taluk.



4. Venkatesan S/o Seerangan Gounder
at Nallathangiyur Koneripatti Village
Mettankadu Post, Sankari Taluk.
5. Perumal S/o Seeranga Gounder Gounder
at Nallathangiyur Koneripatti Village
Mettankadu Post, Sankari Taluk.
6. Seerangan S/o Seeranga Gounder Gounder
at Nallathangiyur Koneripatti Village
Mettankadu Post, Sankari Taluk.
7. Sakthivel
At Nallathangiyur Koneripatti Village
Mettankadu Post Sankari Tk
[As R7 Declared As Major, His Father /
guardian Discharged From The Guardianship
Vide Court Order Dated 19/11/2025 Made In
Cmp.Nos.26953 And 26955 of 2024)

..Respondent(s)

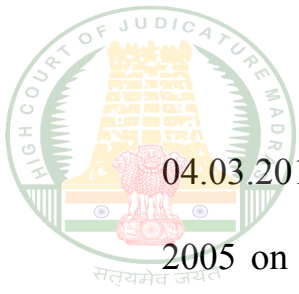
PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code, as against the Judgment and Decree of the learned Subordinate Judge, Sankari in A.S.No.10 of 2010 dated 04.03.2011 reversing the Judgment and Decree of the learned District Munsif, Sankari in O.S.No.12 of 2005 dated 03.03.2010.

For Appellant(s): M/s. P. Jagadeesan

For Respondent(s): M/s.N.Manokaran [for R1 to R4]
R5 – R7 – Served – No appearance.

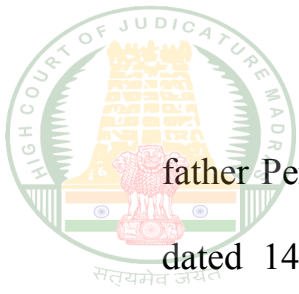
JUDGMENT

The Second appeal has been preferred as against the decree and judgment passed by the Subordinate Court, Sankari in A.S.No.10 of 2010 dated



04.03.2011. The respondents 1 to 4 herein have filed a Suit in O.S. No.12 of 2005 on the file of the District Munsif, Sankari for the reliefs of declaration, permanent injunction, partition and separate possession. The said Suit was partly decreed. The trial Court granted permanent injunction and dismissed the Suit in respect of the prayers declaration and partition. Aggrieved by the said decree and judgment passed by the trial Court, the Plaintiffs have preferred an appeal before the First Appellate Court and the said appeal was allowed by setting aside the judgment and decree passed by the trial Court and decreed the Suit in its entirety. Aggrieved the said decree and judgment, the present second appeal has been filed by the 4th and 5th defendants.

2. The *case of the Plaintiffs* before the trial Court is that the Plaintiffs are the sons of the defendants 1 and 2. The defendants 4 and 5 are the paternal uncle of the Plaintiffs and sons of one Perumal Gounder. Originally the Suit property belonged to one Lakshmanan Gounder. The said Lakshmanan Gounder had three sons namely Perumal, Seerangan and Sellappan and they orally divided the properties. The defendants 4 and 5 are from the branch of Perumal Gounder. The defendants 1 and 2 are sons of Seerangan Gounder. The 3rd defendant and 4th Plaintiff are the grand sons of Seerangan Gounder, born through another Seerangan. The Plaintiffs 1 to 3 are grand sons of said Seerangan Gounder born through Perumal. The defendants 4 and 5 and their

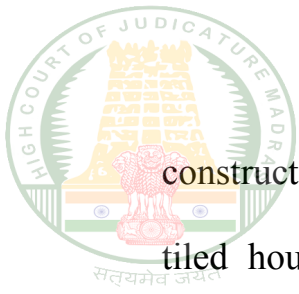


father Perumal Gounder had sold their shares of property through a Sale Deed dated 14.09.1987 to one Seerangammal in respect of the property in R.S.

No.124/1 to an extent of 0.40 cents. Further they sold their share of property in R.S. No.125/1 to one Neela Devi through a Sale Deed dated 11.03.1993. The share allotted to the Seerangan Gounder branch, grand father of the Plaintiffs, and father of the defendants 1 and 2, is under the possession and enjoyment of the Plaintiffs and the defendants 1 to 3. Therefore, the Plaintiffs, being the legal heirs of the defendants 1 and 2, are entitled to 4/7 share over the Suit properties. The Plaintiffs' grand father's another name was Vellaiyan. The Plaintiffs and the defendants 1 and 2 are in possession and enjoyment of the properties. Now the defendants 1 and 2 are acting against the interests of the Plaintiffs and colluded with the defendants 4 and 5 and have created sham and nominal documents. The defendants 4 and 5 have no right or interest over the properties as they have orally divided the properties 30 years back. Therefore, the Plaintiffs have filed the Suit.

3. The brief averments of the *written statement filed by the defendants are as follows:*

The Suit is not maintainable and the same is liable to be dismissed. The relationship and partition between the parties are admitted. After partition, 10 cents were sold to one Neela Devi in S.F. No.125/1 and the said Neela Devi



constructed a house and lived therein. Thereafter, the said Neela Devi sold the tiled house and land to one Perumal, S/o. Sellappan. Therefore, the said Sellappan is also a necessary party to the Suit. It is false to state that the Suit properties were allotted to the grand father Seerangan Gounder and the defendants 1 and 2 and they were in possession and enjoyment of the property and they are entitled to 4/7 share of the Suit properties. The Plaintiffs are not entitled to declaration and partition, since they have no share in the Suit properties. The defendants 4 and 5 have also filed a Suit for permanent injunction in O.S. No.182 of 1992 against the Plaintiffs' father, grand father and younger brother of their father and the same was decreed in favour of the defendants 4 and 5 on 12.03.1998 regarding the Suit properties. Now, the Plaintiffs by colluding with the defendants 1 to 3, have filed this vexatious Suit. The Suit is hit by the Principle of *Res judicata* and the Plaintiffs have not impleaded all the parties in the Suit and therefore, the Suit is not maintainable and the same is liable to be dismissed.

4. Based on the above said pleadings and after hearing both sides, the trial court has framed the following **issues** for trial:-

Issues:

- 1. Whether the Plaintiffs are entitled to the relief of declaration as prayed for?**
- 2. Whether the Plaintiffs are entitled to the relief of permanent injunction as prayed for?**



3. Whether the Plaintiffs are entitled to the relief of partition as prayed for?

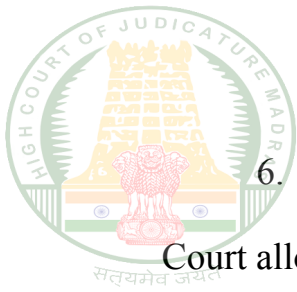
4. Whether it is true that the Suit is barred by the Principle of *res judicata* as alleged by the defendants?

5. Whether the Suit is bad for non-joinder of necessary parties?

6. To what other reliefs, the Plaintiffs are entitled to?

5. Before the trial court, on the side of the plaintiffs, witnesses P.W.1 to PW3 were examined and marked exhibit, Ex.A.1. On the side of the defendants, witnesses D.W.1 and DW2 were examined and marked exhibits, Exs.B.1 to B3 and third party documents were also marked as Ex.X.1 to Ex.X.3. The trial court after considering the evidences adduced on both sides and perusing the records, granted relief of permanent injunction. For the prayers of declaration of title and partition with respect to the property in R.S. No.125/20, the Suit was dismissed and so far as the property in R.S. No.125/5 is concerned, the Suit was dismissed in entirety. Aggrieved by the said decree and judgment, the Plaintiffs have preferred an appeal before the First Appellate Court in A.S. No.10 of 2010 on the file of the Subordinate Judge, Sankari on various grounds.

5.1. The First Appellate Court has framed the *point for determination as to whether the decree and judgment passed by the trial Court in O.S. No.12 of 2005 dated 03.03.2010 is liable to be set aside or not?*



6. After hearing both sides and perusing the records, the First Appellate Court allowed the appeal by setting aside the judgment and decree passed by the trial Court and decreed the Suit as prayed for. Aggrieved by the said decree and judgment, the appellants / defendants 4 and 5 have preferred this second appeal.

7. *This Court, at the time of admitting the second appeal, formulated the following **Substantial Question of Law**:-*

Whether the Lower Appellate Court was right in holding that the property in R.S. No.125/5 belongs to the Plaintiffs in the absence of any evidence and in the light of decree passed in O.S. No.182 of 1992.

8. For the sake of convenience and brevity, the parties herein are referred as plaintiffs and defendants, as referred before the trial Court.

9. The learned counsel appearing for the appellants would submit that the appellants are the defendants 4 and 5 in the main Suit. The respondents 1 to 4 herein, have filed the said Suit for declaration, consequential relief of permanent injunction, for partition and separate possession, claiming that the Suit properties were allotted to the family of the Plaintiffs and the defendants 1 to 3 through oral partition. Thereby, the Plaintiffs are entitled to 4/7 share. The defendants denied the entitlement of the properties by the Plaintiffs and



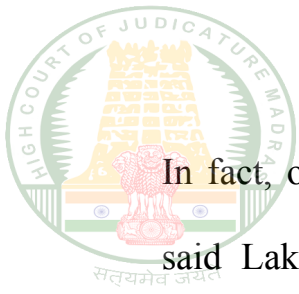
defendants 1 to 3. In fact, the properties are not joint family properties. After oral partition, 10 cents in R.S. No.125/1, were sold to one Neela Devi and the said Neela Devi had constructed a titled house and lived therein. Thereafter, the said Neela Devi sold the said tiled house and land to one Perumal S/o.Sellappan. Therefore, the said Perumal is also a proper and necessary party to the Suit. The Plaintiffs and the defendants 1 and 2 are not in joint possession of the properties. The Plaintiffs have no share in the Suit properties, thereby, they are not entitled to declaration and partition.

9.1. Already these defendants 4 and 5 have filed a Suit for permanent injunction in O.S. No.182 of 1992 against the Plaintiffs' father, grand father and younger brother of his father and the same was decreed in favour of the defendants 4 and 5 through a judgment and decree dated 12.03.1998 regarding the Suit properties. Therefore, the Suit itself is not maintainable. However, the trial Court failed to appreciate the facts in a proper and perspective manner and decreed the Suit in respect of permanent injunction and dismissed the Suit in respect of declaration and partition. Once the trial Court came to a conclusion that the Plaintiffs are not entitled to declaration and partition, the consequential relief of permanent injunction cannot be granted. However, the First Appellate Court, without analysing the facts and complying the law, has erroneously granted declaration and consequential relief of permanent injunction and ordered for partition.



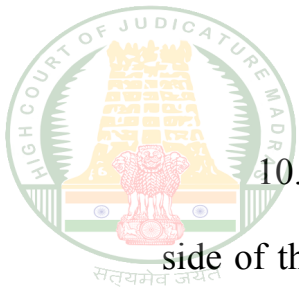
9.2. The First Appellate Court failed to consider that the Suit is bad for non-joinder of necessary parties, as the female members of the family and the subsequent purchasers of the Suit property were not impleaded. There are no evidences to prove that the property in R.S. No.125/5 was allotted to the share of Seerangan Gounder through an oral partition. The First Appellate Court ought to have held that the property in R.S. No.125/5 was allotted to the share of Perumal, the father of the defendants 4 and 5 and the revenue records also stand in the name of Perumal in respect of that property. Thereafter, the patta was also changed in the name of the defendants 4 and 5. Therefore, the Plaintiffs and the defendants 1 to 3 have no right over the property in R.S. No.125/5. Already the defendants 4 and 5 have filed a Suit in O.S. No.182/1992 against the defendants 1 and 2 and their father and got a decree for permanent injunction in respect of the Suit property. Therefore, the present Suit is barred by the principle of *res judicata*. Therefore, the findings of the First Appellate Court are perverse and therefore, the judgment and decree passed by the First Appellate Court are liable to be set aside by allowing this second appeal.

10. The learned counsel appearing for the respondents would submit that the respondents 1 to 4 are the Plaintiffs, who filed the Suit, for declaration, consequential relief of permanent injunction, partition and separate possession.



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In fact, originally the properties belonged to one Lakshmanan Gounder. The said Lakshmanan Gounder had three sons namely Perumal, Seerangan and Sellappan. The sons of Lakshmanan Gounder had orally partitioned the properties and the defendants 1 and 2, Perumal and Seerangan, sons of Seerangan Gounder, have not partitioned the properties between them, the Plaintiffs 1 to 3, who are the grand sons of Seerangan, born through Perumal and the 3rd defendant and the 4th Plaintiff are also the grand sons of Seerangan, born through another Seerangan / 2nd defendant, the defendants 4 and 5 being the sons of Perumal, along with their father Perumal Gounder have sold their share of property in respect of R.S. No.124/1 through a Sale Deed dated 14.09.1987 to one Seerangammal. They also sold property in R.S. No.125/1 through a Sale Deed dated 11.03.1993 to one Neela Devi. The said property was allotted to Seerangan Gounder, who is the grand father of the Plaintiffs and the father of the defendants 1 and 2. Originally the revenue records stood in the name of the Plaintiffs' grand father and they have paid tax regularly and they were in possession and enjoyment of the property. The 4th defendant has no right over the property. The defendants 4 and 5 are creating cloud over the property, thereby, they filed the Suit for declaration and for partition and separate possession.



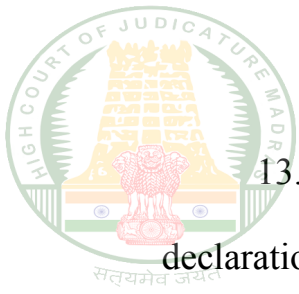
10.1. The trial Court, without appreciating the evidences adduced on the side of the Plaintiffs in a proper and perspective manner, dismissed the Suit in respect of the property in R.S. No.125/5 and decreed the Suit in respect of the property in R.S. No.124/20 and granted perpetual injunction and dismissed the prayer in respect of declaration and partition. However, the First Appellate Court has correctly appreciated the facts and allowed the appeal by setting aside the decree and judgment passed by the trial Court based on the evidences and admissions made by the defendants. Therefore, the decree and judgment passed by the First Appellate Court are based on the evidences and there is no illegality or perversity in the judgment and decree passed by the First Appellate Court and the second appeal is liable to be dismissed.

11. This Court heard both sides and perused the entire materials available.

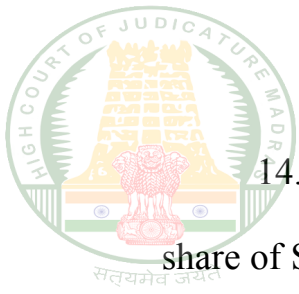
12. In this case, the Plaintiffs have filed a Suit for declaration to declare that the Plaintiffs and the defendants 1 to 3 are having absolute title over the Suit properties and to grant consequential relief of permanent injunction restraining the defendants 4 and 5 from interfering with the Plaintiff's possession and enjoyment of the property and also for partition to divide the Suit property in 7 equal shares and allot 4 shares to the Plaintiffs. According to the Plaintiffs, the Suit properties are ancestral properties. Originally the Suit



property belonged to one Lakshmanan Gounder. The said Lakshmanan Gounder had three sons namely Perumal, Seerangan and Sellappan. The said sons of Lakshmanan Gounder had orally partitioned their properties among them. The Suit properties were allotted to Seerangan, one of the Sons of Lakshmanan Gounder. The said Seerangan had two sons Perumal / 1st defendant and Seerangan / 2nd defendant. The Plaintiffs 1 to 3 are sons of Perumal / 1st defendant. The 4th Plaintiff and the 3rd defendant are the sons of the 2nd defendant Seerangan. The sons of Perumal namely Nattarayan / 4th defendant and Laxmanan / 5th defendant have also sold their properties to one Seerangammal in respect of the property in R.S. No.124/1 and also they sold the property in R.S. No.125/1 to one Neela Devi W/o. K. Ranganathan. Therefore, the properties allotted to Seerangan have to be divided into $\frac{1}{2}$ share and the son of the said Seerangan namely Perumal / 1st defendant is entitled to $\frac{1}{2}$ share and another son namely Seerangan / 2nd defendant is entitled to $\frac{1}{2}$ share. Further the share of Perumal / 1st defendant has to be divided between the Plaintiffs 1 to 3 and the share of Seerangan / 2nd defendant has to be divided between his legal heirs namely the 4th Plaintiff and the 3rd defendant. The defendants have denied the entitlement of the properties by Seerangan in S.F. No.125/1 and the defendants 4 and 5 sold their shares to one Neela Devi to an extent of 10 cents. Thereafter, the said Neela Devi sold the property to Perumal. Therefore, they are also necessary parties to the Suit and they denied the case of the Plaintiffs.

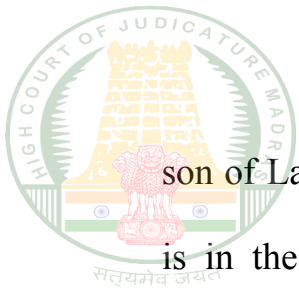


13. Since the Suit has been filed by the Plaintiffs for the reliefs of declaration, consequential relief of permanent injunction, partition and separate possession, the Plaintiffs have to prove their case independently through proper evidences. In order to prove the same, before the trial Court, on the side of the Plaintiffs, they examined P.W.1 to PW3 and marked exhibit, Ex.A.1. On the side of the defendants, witnesses D.W.1 and DW2 were examined and marked exhibits, Exs.B.1 to B3. In order to prove the case of the Plaintiffs, there are no sufficient evidences adduced by the Plaintiffs. The Plaintiffs are claiming that the Suit properties were allocated to their grand father Seerangan, but there are no records to show that the properties were allotted to the said Seerangan / 2nd defendant, who is the grand father of the Plaintiffs 1 to 4 and the 3rd defendant and the father of the defendants 1 and 2. The trial Court also, by considering the evidences adduced on both sides and the admission made by PW1 in his evidence that the 1st defendant married one Maniammal and gave birth to the 1st defendant and one Chellammal. After the demise of said Maniammal, the 1st defendant married one Lakshmi as his 2nd wife and through her, he gave birth to the Plaintiffs 2 and 3. Similarly apart from the 4th Plaintiff and the 3rd defendant, the 2nd defendant has one more daughter namely Annakkili. The said Annakkili and the Chellammal are not the parties to the Suit. Therefore, the Suit is bad for non-joinder of necessary parties.



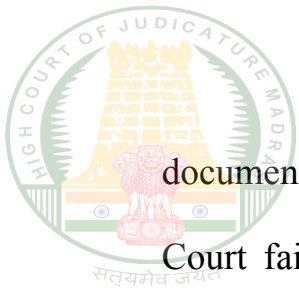
14. Further, PW1 also admitted that the properties already allotted to the share of Seerangan were divided between the defendants 1 and 2 orally. Further, the Plaintiffs have not included all the properties allotted to the Seerangan through partition and they filed a Partition Suit in respect of same properties. The trial Court also considered that already the defendants 4 and 5 have filed a Suit in respect of the same properties and the same is revealed through Ex.B.2., Therefore, the Suit is clearly bad for partial partition. However, the trial Court failed to consider that the Plaintiffs have not filed any document to prove their possession and enjoyment and without any document to prove the possession, granted permanent injunction in respect of the property situated in R.S. No.125/20 and dismissed the Suit in respect of the property in R.S. No.125/5. As the defendants have no objection to pass decree in respect of the property in R.S. No.125/20, the trial Court has granted decree for permanent injunction.

15. The First Appellate Court, in its judgment observed that the defendants have no objection to grant decree in respect of the property in R.S. No.125/20, however they objected in respect of the property in R.S. No.125/5. PW2, who is a revenue authority, in his evidence stated that the property in R.S. No.125/5, as per the revenue records, belonged to the sons of Perumal Gounder namely Natarayan and Iyer @ Lakshmanan and earlier the said property was in the name of Perumal Gounder and R.S. No.125/20 belonged to one Vellaiyan,



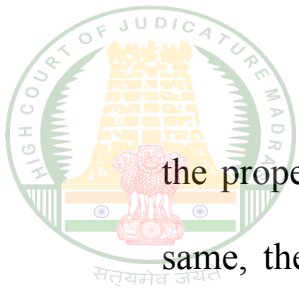
son of Lakshman Gounder. As per 'A' Register, the property in R.S. No.125/5 is in the name of Perumal Gounder. Prior to that, it was in the name of Vellaiyan. Either the Plaintiffs or their father had never been under the possession and enjoyment of the property in R.S. No.125/5. Further, DW1 in his cross examination admitted that the properties in R.S. No.125/5 and 125/20 belonged to the Plaintiffs and he sold the property in R.S. No.125/5 to one Neela Devi through a Sale Deed dated 11.03.1993 to an extent of 10 cents. Though he filed a Suit in R.S. No.182/1992, he earlier sold the property to Neela Devi and he denied that the another name of Seerangan is Vellaiyan. However, he admitted that the property in R.S. No.125/20 belonged to the grand father of the Plaintiffs. Therefore, the trial Court granted decree based on the evidence adduced on the side of the defendants. Once patta stands in the name of Vellaiyan, thereafter it was transferred in the name of Perumal, and without any records, Patta cannot be transferred and therefore, the trial Court decreed the Suit.

16. The First Appellate Court failed to consider that the Plaintiffs have not filed any document to show that the Suit properties belonged to the said Seerangan Gounder. When the defendants categorically denied the title of the property in respect of R.S. No.125/5, it is the duty of the Plaintiffs to prove the case as the Suit has been filed for declaration and partition. Without any



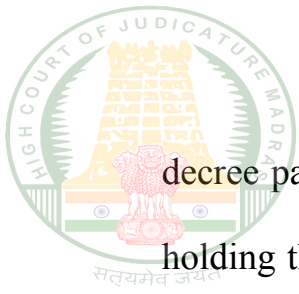
documents, the First Appellate Court granted decree and the First Appellate Court failed to consider that all the legal heirs of Seerangan have not been included in the Suit and the female members Chellammal and Annakkili were omitted to be included. Therefore, the findings of the First Appellate Court, without any documents and evidences and by ignoring the non-joinder of necessary parties and non-inclusion of the entire properties, granting decree is perverse. Therefore, the judgment and decree passed by the First Appellate Court are liable to be set aside.

17. As far as the *substantial question of law that Whether the Lower Appellate Court was right in holding that the property in R.S. No.125/5 belongs to the Plaintiffs in the absence of any evidence and in the light of decree passed in O.S. No.182 of 1992*, is concerned, the Plaintiffs have filed the Suit for declaration, consequential relief of permanent injunction, partition and separate possession by claiming that they are entitled to Suit properties in R.S. No.125/20 and 125/5 and the said properties belonged to them through partition, were allotted to the grand father of these Plaintiffs and the 3rd defendant. The defendants have no objection in respect of the property in R.S. No.125/20, whereas they denied the right of the Plaintiffs over the property in R.S. No.125/5 and already they sold the said property in R.S. No.125/5 and the same was also admitted by the Plaintiffs. While so, the Plaintiffs have to prove that



the property in R.S. No.125/5 belongs to the Plaintiffs. In order to prove the same, they have not produced any document and without any document, the First Appellate Court granted decree only based on the answers given by the DW1, while putting questions on him by the Plaintiffs during cross examination by stating that 'he does not know'.

18. It is a well settled law that the Plaintiffs, who filed the Suit for declaration have to prove their case on their own evidence and cannot take advantage of the weakness of the defence. Ignoring the said settled proposition of law, the First Appellate Court, without any documents, granted decree based on the answers given by the defendants as 'he does not know'. Further the First Appellate Court failed to consider that all the shareholders of the properties were not impleaded as parties to the Suit and all the properties allotted to their grand father through partition have not been included, thereby, the First Appellate Court was not right in holding that the property in R.S. No.125/5 belongs to the Plaintiffs in the absence of any evidence. Moreover, already the defendants 4 and 5 filed a Suit as against the Plaintiffs' predecessors in O.S. No.182 of 1992 and the same was decreed in favour of the defendants 4 and 5. Though the said Suit was for permanent injunction, already this Court, for the same properties, granted decree and thereby, the defendants are estopped from denying the properties of the defendants 4 and 5. Therefore, in the light of the



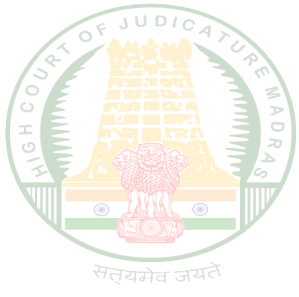
decree passed in O.S. No.182 of 1992, the First Appellate Court is not right in holding that the property in R.S. No.125/5 belongs to the Plaintiffs. Therefore, the Plaintiffs are not entitled to any relief, however, since the defendants have no objection for decreeing the Suit in respect of the property in R.S. No.125/20, the trial Court has granted decree for permanent injunction. The defendants have also not preferred any appeal. In view of the above discussions and the substantial questions of law, granting decree for declaration, consequential relief of permanent injunction, partition over the entire properties by the First Appellate Court are not sustainable. Thereby, the decree and judgment passed by the First Appellate Court are liable to be set aside and the decree and judgment passed by the trial Court are liable to be restored.

19. Accordingly, the ***Second Appeal stands Allowed.*** The Judgment and Decree passed by the Subordinate Judge, Sankari in A.S.No.10 of 2010 dated 04.03.2011 are set aside and the Judgment and Decree passed by the District Munsif, Sankari in O.S.No.12 of 2005 dated 03.03.2010 are restored. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

05-08-2026

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

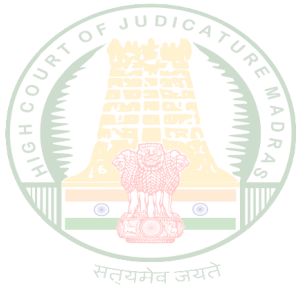
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To

1. The Subordinate Judge, Sankari.
2. The District Munsif, Sankari



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SA No. 826 of 2



P.DHANABAL, J.

MJS

SA No. 826 of 2011

05-08-2026