



SA No. 262 of 2015

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18-08-2026

CORAM

THE HON'BLE MR.JUSTICE P. DHANABAL

SA No. 262 of 2015 & M.P.No.1 of 2015

1. Irudhayamary
2. A.Joseph Vanathaiyan
3. A.Ractchakar
4. A.Arokiyaraj
5. A.Rayappan
6. A.Leema Rose
7. A.Gloriya Mary
8. A.Selvarani
9. A.Amalarani

..Appellant(s)

Vs

1. M.Periyamayaka Mary
2. A.Anthony Mary
3. A.Philomena Mary
4. V.Kuzhandhai Mary

..Respondent(s)

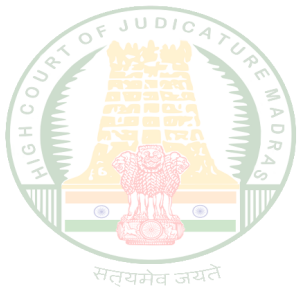
Prayer: Second Appeal filed under Section 100 of C.P.C. to set aside the Judgment and Decree dated 19.08.2014 passed in A.S.No.55 of 2013 on the file of the II Additional Sub Court, Cuddalore confirming the Judgment and Decree dated 16.12.2011 passed in O.S.No.85 of 2008 on the file of the learned Principal District Munsif Court, Cuddalore

For Appellant(s):

Mr.A.Nilaphar for
Mrs.R.Meenal

For Respondent(s):

Mr.T.S.Baskaran For R1



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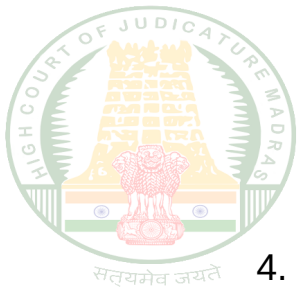
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J U D G M E N T

This Second Appeal has been preferred as against the Judgment and Decree passed by the learned II Additional Subordinate Judge, Cuddalore in A.S.No.55 of 2013 dated 19.08.2014.

2. For sake of convenience and brevity, the parties herein are referred as plaintiff and defendants, as referred before the trial court.

3. The appellants are the defendants 1 to 9. The 1st respondent, who is the plaintiff before the trial court has filed a suit in O.S.No.85 of 2008 on the file of learned Principal District Munsif, Cuddalore for partition, separate possession and for costs. The said suit was decreed on 16.12.2011. Aggrieved by the said Decree and Judgment, 1 to 9 defendants have preferred an appeal suit in A.S.No.55 of 2013 on the file of learned II Additional Subordinate Judge, Cuddalore and the said appeal was dismissed on 19.08.2014 by confirming the decree and Judgment passed by the trial court. As against the same, the present Second Appeal has been filed by the appellants / defendants.



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4. The case of the plaintiff before the trial court is that the suit properties originally belonged to one Vanathaiya Padayachi, ancestrally. The said Vanathaiyan Padayachi died intestate leaving behind his two sons, namely, Arulappan and Antonyraj and they jointly enjoyed the properties as their absolute properties. The said Arulappan and Antonyraj died intestate, the 1st defendant is the wife of Arulappan and the defendants 2 to 9 are the children of Arulappan and the 10th defendant is the wife of deceased Antonyraj, plaintiff and 11th defendant are the daughters of deceased Antonyraj. The suit properties are enjoyed by all the heirs of Arulappan and Antonyraj, therefore, the plaintiff demanded the defendants for partition and they are evading from partition of the property. The plaintiff and defendants 10 and 11 are jointly entitled to 1/2 share, thereby out of 1/2 share, the plaintiff is entitled to 1/6 share and the defendants 1 to 9 are entitled to 1/18 share. The defendants 10 and 11 are each entitled to 1/6 share in the suit properties, therefore, the plaintiff filed the suit.

5. The 2nd defendant filed written statement stating that the suit properties are enjoyed by Arulappan and Antoniraj. The suit properties



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belonged to Vanathiayan and the said Vanathaiyan executed settlement deed dated 13.05.1978 in favour of 2nd defendant. At the time of execution of settlement deed, the defendant was minor represented by his mother, Guardian and the defendant took possession through his mother, thereby the 2nd defendant is in possession and enjoyment of the suit property to an extent of 1.01 acres. In fact, the plaintiff failed to state the real genealogy, Antoniraj married one Reetamary as his first wife, a son was born to him by name, Devadoss, again, he married 10th defendant as 2nd wife. The 10th defendant left her husband when she was in death bed. Antonymary lived separately in Kallakurichi with two daughters and Antoniraj died in the year 1986, after death of Antony raj, the 10th defendant went to Kallakurichi village in villupuram district and started living with her sister's husband. The 10th defendant gave birth to a boy through her sister's husband. Vanathaiyan executed settlement deed dated 30.05.1978 in favour of Devadoss. The plaintiff did not whisper anything about the settlement deed in the name of Devadoss, during the life time of Devadoss, the property covered under settlement deed was in his exclusive possession enjoyment of the defendants' brothers. As far as defendants 10 and 11 are concerned, they are



ousted from enjoyment of the properties, therefore, the suit is liable to be dismissed.

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

“ 1. Are the suit properties joint family properties, as alleged by the plaintiff?

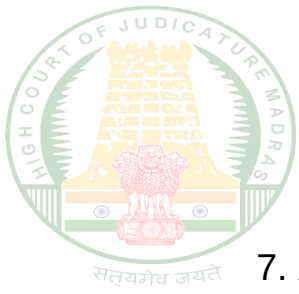
2. Is the settlement deed dated 30.05.1978 is true, valid and acted upon?

3. Is the suit properly valued for the purpose of court fees?

4. Is the plaintiff is entitled to a preliminary decree for declaration of her 1/6 share in the suit property?

5. To what other relief?”

Before the trial court on the side of the plaintiff, P.W.1 was examined and marked exhibits Ex.A.1 to A.17. On the side of the defendants, they examined D.Ws.1 to 3 as witnesses and marked exhibits B.1 to B.65. After evaluating oral and documentary evidences adduced on both sides, the trial court decreed the suit with costs on 16.12.2011.



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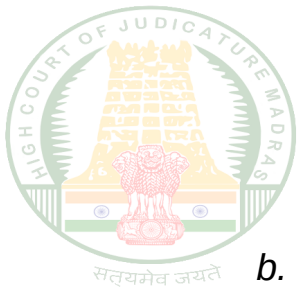
7. Aggrieved by the said decree and judgment, the defendants 1 to 9 have preferred an appeal suit on the file of II Additional Subordinate Judge, Cuddalore in Appeal Suit in A.S.No.55 of 2013 on various grounds. The First Appellate Court framed the following point for determination:-

“1. Whether the Judgment and decree of the Lower court are to be set aside or to be confirmed??”

After hearing both sides and perusing the records, the First Appellate Court dismissed the Appeal Suit by confirming the Decree and Judgment passed by the trial court.

8. As against the said Decree and Judgment of the First Appellate Court, the appellants / 1 to 9 defendants have preferred the present Second Appeal. This Court, at the time of admitting the Second Appeal on 01.06.2015, framed the following Substantial Questions of Law:-

“a. Whether in law the Courts below are right in failing to see that whatever right the 1st respondent might have had in the suit properties, got extinguished by the passage of 30 years and also as she was ousted from all the properties.



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b. Whether in law the Courts below are right in overlooking the admissions of the first respondent and the recitals of Exs.B.1 and B.17 settlement deeds and coming to an erroneous conclusion, warranting interference under Section 100 CPC?

9. The learned counsel appearing for the appellants would submit that the 1st respondent, who is the plaintiff filed the suit for partition, in respect of the suit properties. In fact, the suit property originally belonged to Vanathaiyan. The said Vanathaiyan had three sons, namely, Arulappan, Antonyraj and Kulanthaiappan and one daughter, Kulanthaimary. The said Vanathaiyan executed settlement deed dated 30.05.1978 in favour of one Devadoss, through Ex.B.17 and executed settlement deed in favour of the 2nd defendant through Ex.B.1. The plaintiff, 10 and 11 defendants are the legal heirs of Antoniraj and the defendants 1 to 9 are the heirs of Arulappan and kulanthaiyan died without performing marriage. Kulanthaimary has been added as party to the proceedings. Apart from the plaintiff, defendants 10 and 11, the said Devadoss also born to Antonyraj and he died issue less, therefore, the property settled in favour of Devadoss belongs to the heirs of Antoniraj,



namely, plaintiff, D10 and D11. In other properties, viz., Arulappan branches D1 to D9 are jointly entitled to 1/3 share. The said Kulanthaimary is entitled to 1/3 share. However, the plaintiff and others are ousted.

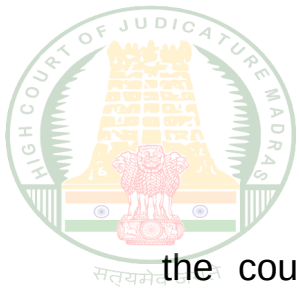
9.1. Though the property has been settled in favour of Devadoss, the property covered under Settlement deed was in exclusive possession of the 2nd defendant and his brothers and the property covered under the settlement deed has been enjoyed for more than 20 years, in the open, peaceful, continuous and uninterrupted possession and enjoyment, thereby they prescribed title through adverse possession and the 1st defendant also paid kist to the suit properties. The defendants 10 and 11 ousted from enjoyment of the suit property, therefore, the defendant 1 to 9 are entitled to the properties. However, the courts below have failed to consider the evidences of the defendants and erroneously granted partition, the courts below failed to consider that P.W.1 admitted the possession of the 1st appellant and the 1st respondent knew the execution of settlement deeds Exs.B.1 and B.17 while so, without challenging the settlement deeds, belatedly filed the



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suit and the appellants are entitled to adverse possession and the same has not been considered by the courts below, therefore, the Judgment and decree passed by the courts below are liable to be set aside by allowing the Second Appeal.

10. The learned counsel appearing for the respondents would submit that the plaintiff has filed the suit for the relief of partition and separate possession and there is no dispute in respect of the relationship between the parties. The trial court has decreed the suit except Ex.B.1, settlement deed mentioned in the properties. As far as the properties covered under Ex.B.17 are concerned, it has come under the branch of the plaintiffs and the said Devadoss died issue less, thereby the above said property belongs to the plaintiff, Defendants 10 and D.11, therefore, the plaintiff and defendants 10 and 11 both are equally entitled to the properties. Therefore, the courts below have correctly granted partition excluding the Ex.B.1 mentioned properties and granted preliminary decree 1/2 share in respect of Ex.B.7 mentioned properties and 1/9 share in the suit properties excluding the properties covered under Ex.B.1 settlement deed in favour of the 2nd defendant and



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the courts below have correctly decreed the suit and there is no perversity or illegality in the Judgments passed by the courts below and the Second Appeal is liable to be dismissed.

11. Heard the learned counsel appearing for the appellants and the learned counsel appearing for the respondents and perused the entire documents placed on record.

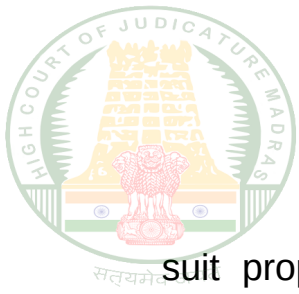
12. In this case, there is no dispute in respect of the relationship between the parties, however, in the plaint, the plaintiff pleaded that one Arulappan and Antoniraj are legal heirs of Vanathaiyan but the said Vanathaiyan had three sons and one daughter, namely, Arulappan, Antonyraj, Kulanthaiappan and one daughter, Kulanthaimary. The said Kulanthaippan had died as bachelor. The said Antonyraj had two daughters. The said Arulappan died intestate leaving behind the defendants 1 to 9, 10th defendant is the wife of Antonyraj. The plaintiff and 11th defendant are children of 10th defendant and Antoniraj and 12th defendant is the daughter of Vanathiayan. This Court carefully perused the entire evidences and all the available evidences shows that



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Vanathaiyan had executed settlement deed in favour of 2nd defendant in respect of some portion of the properties and also executed settlement deed dated 30.05.1978 in favour of one Devadoss, who is the son of Antoniraj. The said Devadoss died issueless, thereby the properties of the Devadoss have to be divided between the heirs of Antonyraj.

13. There is no dispute that the properties belonged to Vanathaiyan Padayachi and thereby the properties of the Vanathaiyan Pandayachi have to be divided between his sons and daughters and therefore, branch of Arulappan, 1 to 9 defendants and the branch of Antony raj, plaintiff and 10 and 11 defendants and the 12th defendant, who is the daughter of Vanathaiya Padayachi are equally entitled to 1/3 share. Since the properties were settled through Exs.B.1 and B.17 in favour of the 2nd defendant and Devadoss respectively, those properties have be excluded from partition. The remaining properties have to be divided between the heirs of Arulappan and Antonyraj and 12th defendant. The share of Devadoss in the properties covered in Ex.B.17, settlement deed, the legal heirs of Antony raj, namely the plaintiff, 10 and 11 defendants are equally entitled to the properties, therefore, in the



suit properties, the plaintiff is entitled to 1/9 share and the 1 to 9 defendants are jointly entitled to 3/9 share. The defendants 10 and 11 are each entitled to 1/9 share and the defendants 10 to 12 are entitled to 3/9 share excluding the properties covered under Exs.B.1 and B.17.

14 As far as ExB.1 is concerned, the same exclusively belong to the 2nd defendant. As far as properties covered under Ex.B.17 are concerned, the heirs of Antonyraj, namely, the plaintiff and 11th defendant are entitled to 1/2 share. The courts below have correctly appreciated the facts and correctly allotted the shares. The defendants, who are the appellants, herein though taken a plea of ouster and they are in possession and enjoyment of the property for more than 20 years, there is no evidence to prove that contention and the courts below have correctly analysed the evidences and rendered concurrent findings, therefore, the plaintiffs failed to prove the plea of ouster and they are in possession and enjoyment of the property for many years. Therefore, the plaintiffs failed to prove the plea of ouster. Though the settlement deeds have been executed long back in the year 1978 in respect of other properties covered under Ex.B.1 and B.17 and the courts below



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granted partition to the remaining properties, as they are in joint possession and enjoyment of the legal heirs of Vanathaiyan, since there is no dispute between the parties about the relationship and the entitlement of shares, and the plea of ouster also not proved by the appellants / defendants, the courts below are right in decreeing the suit for partition, thus the Substantial Questions of Law are answered in favour of the respondents and as against the appellants.

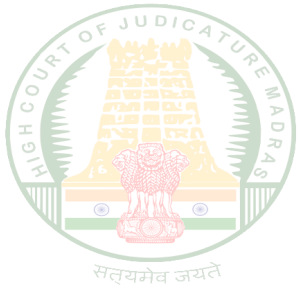
In view of the above said discussions, this Court is of the view that this present Second Appeal has no merits and deserves to be dismissed. Accordingly, the Second Appeal is dismissed and the Judgment and decree passed by the First Appellate Court in A.S.No.55 of 2013 dated 19.08.2014 are confirmed. Consequently, connected miscellaneous petition is closed. No costs.

18-08-2026

ssd

To

1. The Principal District Munsif, Cuddalore
2. The II Additional Subordinate Judge, Cudalore



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P.DHANABAL, J.

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