



S.A.No.702 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.11.2025

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CORAM:

THE HON'BLE Mr.JUSTICE **P.DHANABAL**

**S.A.No.702 of 2015 &
M.P.No.1 of 2015**

1. Kasthuri
2. V.Kachan Babu
3. V.Aravind Babu
4. V.Chandhan Babu
5. V.Geetha

... Appellants

Vs.

1. R.Indira Gopal (died)
 2. Jaganathan
 3. Mohan
 4. Varuna
 5. Komala
- (R2 to R4 already on record and R5 brought on record as legal heirs of the deceased R1, viz., R.Indira Gopal vide Court order dated 03.03.2022 made in CMP.No.18216/19 in C.M.P.No. 18216 of 2019 in S.A.No.702 of 2015 (NAVJ))

... Respondents

Prayer:

Second Appeal filed under Section 100 of Civil Procedure Code to set aside the Judgment and Decree dated 12.03.2015 made in A.S.No.442 of 2011 on the file of the learned Second Additional Judge, City Civil Court, Chennai reversing the Judgment and Decree dated 16.12.2010 made in O.S.No.51 of 2008 on the file of the learned Second Assistant Judge, City Civil Court, Chennai.



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For Appellants : Mr.N.Manokaran

For Respondents : Mr.R.Ponnusamy for R2 to R5

JUDGMENT

This Second Appeal has been preferred as against the Decree and Judgment passed by the First Appellate Court, namely, the learned Second Additional Judge, City Civil Court, Chennai in A.S.No.442 of 2011 dated 12.03.2015, wherein the respondents herein have filed the said appeal as against the Decree and Judgment passed in O.S.No.51 of 2008 by the learned Second Assistant Judge, City Civil Court, Chennai dated 16.12.2010. The appellants have filed the above said suit for the relief of partition and the said suit was decreed. As against the said decree and Judgment, the respondents herein have preferred the First Appeal and the First Appellate Court allowed the appeal and reversed the Judgment and Decree of the trial Court. Therefore, the plaintiffs have preferred this Second appeal.

2. For the sake of convenience and brevity, the parties in this Second Appeal are referred as plaintiffs and defendants as referred before the trial court.

3. The brief averments of the plaint are as follows:-

(i) The suit properties were originally purchased by one Ramaswamy Reddy through sale deed dated 04.02.1950. After purchase of the said property, the said Ramasamy Reddy had put up a



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tilled house in the property and he died intestate on 05.04.1972 leaving behind his wife Chinnammal, daughter, Kasturi/ 1st plaintiff herein and his son, Indra Gopal/ 1st defendant to succeed his estate. The said Chinnamal, who is the wife, 1st plaintiff, who is the daughter and 1st defendant, who is the son of Ramasamy Reddy respectively are equally entitled to 1/3rd share over the properties of Ramasamy Reddy. After the demise of said Ramasamy Reddy, his wife, Chinnammal settled her 1/3rd undivided share in favour of her son, viz., 1st defendant through Settlement Deed dated 19.05.1972. Therefore, the 1st defendant is entitled to 2/3rd share, 1st plaintiff is entitled to 1/3rd share over the properties.

(ii) The 1st defendant sold the front northern portion of the property to an extent of 600 sq.ft., to one Santhi, through sale deed dated 10.09.2003. Thereafter, the defendants also put up illegal construction to an extent of 360 sq.f.t, of land in the backside portion of the property. There is a common passage in the centre of the property dividing the property into north and south portions. The southern side front portion is completely occupied by the defendants and the remaining portion in the back side is under the possession of the plaintiffs. When the plaintiffs demanded for partition, the defendants refused for partition. Therefore, the plaintiffs filed the suit.



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4. The brief averments of the Written Statement filed on behalf of the defendants are as follows:-

(i) The defendants denied all the allegations except those that are specifically admitted herein and the plaintiffs are put to strict proof of the averments made in the plaint. The defendants admitted that the property was purchased by Ramasamy Reddy. The wife of the said Ramasamy Reddy, who is the mother of the 1st plaintiff and the 1st defendant had settled 1/3rd share of her property in favour of the 1st defendant.

(ii) Already, the property was mortgaged by the 1st plaintiff and the 1st defendant. At no point of time, the plaintiffs are in possession of the property as alleged in the plaint. The suit is not maintainable and the defendants denied the averment that the plaintiffs are entitled to 800 sq.ft., in the suit schedule property. The defendants have paid sufficient money to the plaintiffs to purchase their shares in the property and after receiving valuable consideration, the plaintiffs have refused to execute necessary documents in favour of the defendants. Therefore, the suit is liable to be dismissed.



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5. Based on the said pleadings and hearing both sides and on

perusing the records, the trial court has framed following issues for trial:

“1) Whether the payment of court fee is correct?

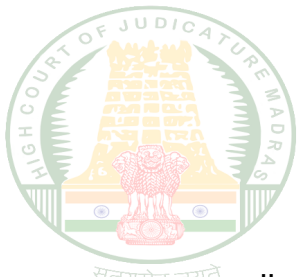
2) Whether the plaintiffs are entitled to 1/3rd share over the property?

3) Whether the mortgaged money obtained by the plaintiffs was paid through their shares?

4) To what other reliefs, the plaintiffs are entitled to?”

6. Before the trial court, on the side of the plaintiffs, 1st plaintiff was examined as P.W.1 and marked Exhibits Exs.A.1 to A.7. On the side of the defendants, 1st defendant was examined as D.W.1 and marked Exhibits B.1 to B.5. After hearing both sides and perusing the records, the trial court decreed the suit by passing preliminary decree of 1/3rd share to the plaintiffs. Aggrieved by the said Judgment and decree, the defendants have preferred the First Appeal in A.S.No.442 of 2011 on the file of the learned II Additional Judge, City Civil Court, Chennai and the First Appellate Court framed the following points for determination:-

“1. Whether the 1st respondent / 1st plaintiff is not entitled to 1/3rd share in the suit property?



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2. Whether the 1st respondent / 1st plaintiff is not entitled to preliminary decree as prayed for?

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3. Whether, the Judgment and decree of the trial court is not in accordance with law?

4. To what relief?"

7. Thereafter, the First Appellate Court after discussing the evidence adduced on both sides and perusing the records, allowed the appeal by holding that the 1st plaintiff after mortgaging the property without discharging mortgage amount, cannot claim partition over the suit property. Aggrieved by the said decree and judgment, the present Second Appeal is filed by the plaintiffs. This Court, at the time of admitting the appeal, on 25.08.2015 formulated the following Substantial Questions of Law:-

"a. Whether the defendants are entitled to succeed on the basis of their stand in the oral evidence when they could not have been permitted to lead any evidence for want of any specific pleadings?"

b. Whether the plaintiffs can be non-suited in view of the stand taken by the defendants that the entire mortgage amount had been given to the 1st plaintiff, in the absence of any proof or legal evidence, particularly when the 1st plaintiff and the 1st defendant had jointly



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executed and later redeemed the mortgage under Ex.B.2 and Ex.B5

respectively?

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c. Whether in law the first appellate court is not in overlooking that the settlement deed dated 19.05.1972 (Ex.A.3) is void in law as per the decision of the Hon'ble Supreme Court reported in Thamma Venkatasubbama case reported in AIR 1987 SC 1775?"

8. The learned counsel appearing for the appellants would submit that as follows:-

(i) The 1st plaintiff and 1st defendant are the daughter and son of Ramasamy Reddy respectively. The said Ramasamy Reddy purchased the property through sale deed dated 04.02.1950. The said Ramasamy Reddy died intestate on 05.04.1972 and after demise of Ramasamy Reddy, his wife Chinnammal, 1st plaintiff and 1st defendant are equally entitled to 1/3rd share. The said Chinnammal, mother of the 1st plaintiff and 1st defendant executed a settlement deed in respect of her 1/3rd share in favour of her son, viz., 1st defendant through settlement deed dated 19.05.1972. Therefore, the 1st plaintiff is entitled to 1/3rd share.

(ii) The defendants also admitted the relationship between the parties and entitlement to the shares. But the defendants pleaded that the property was jointly mortgaged by the 1st plaintiff and 1st defendant



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and after mortgage, the 1st plaintiff has not paid any money to redeem the mortgage. Further, the 1st defendant alone paid money and redeemed the mortgage, therefore, the 1st plaintiff is not entitled to share over the property. The trial court after perusing the records and hearing both sides, correctly decreed the suit by allotting 1/3rd share to the 1st plaintiff. However, the First Appellate Court without considering the recitals of the mortgage deed dated 13.10.2000 had erroneously held that the 1st plaintiff has not paid any money for redemption of mortgage and therefore, she is not entitled to share over the property. Therefore, the judgment of the First Appellate Court reversing the judgment and decree of the trial court is unsustainable. The 1st defendant has not specifically denied the claim of the 1st plaintiff but without any pleadings, they were permitted to adduce evidence.

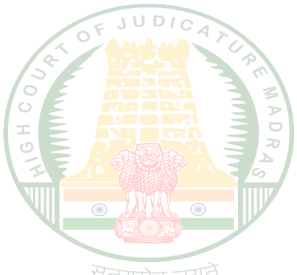
(iii) The 1st defendant had taken a stand that the entire mortgage money has been given to the 1st plaintiff and there is no proof, however, both the 1st plaintiff and the 1st defendant executed a mortgage deed jointly and also redeemed jointly. Thereafter, the mother of the 1st defendant and 1st plaintiff, after demise of their father, executed a settlement deed in favour of 1st defendant in respect of her 1/3 definite share, therefore, the settlement deed is valid and the defendants also not questioned the settlement deed, therefore, the plaintiffs are entitled



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to partition over the property and the Second Appeal is liable to be allowed. Further, the learned counsel for the appellants relied on the **Judgment of this Court in A.S.No.249 of 1996 dated 27.06.2022 reported in MANU/TN/5005/2022 [Lakshmanan and Ors. Vs. B.Bhaskaran and Ors.]**

9. The learned counsel for the respondents would submit that the 1st defendant mortgaged the property and the said mortgage money was paid to the 1st plaintiff in lieu of her share. Unfortunately, the 1st defendant has not obtained any deed by relinquishing right of the 1st plaintiff at the time of payment of money, therefore, the plaintiffs are not entitled to the share, since she already received the money for her share. However, the trial court failed to consider the evidence in a proper perspective manner, thereby decreed the suit. Therefore, the defendants have preferred the First Appeal before the First Appellate Court. The First Appellate Court correctly held that the 'plaintiffs cannot have right over the property' without discharging the mortgage loan amount and thereby allowed the appeal, which is in accordance with law. There is no Substantial Question of Law involved in this case. Hence pleaded to dismiss the Second Appeal.



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10. Heard the learned counsel appearing on both sides and

perused the entire documents placed on record.

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11. In this case, there is no dispute that the property was purchased by the father of the 1st plaintiff and the 1st defendant, viz., Ramasamy Reddy and thereafter he died intestate, after his demise, the property of Ramasamy Reddy have to be devolved on 1st plaintiff and 1st defendant and his wife, Chinnamal. It is also admitted fact that Chinnamal executed settlement deed in favour of the 1st defendant therefore, the 1st plaintiff is entitled to 1/3rd share and the 1st defendant is entitled for 2/3rd share.

12. The defendants' contention is that after obtaining loan by mortgaging the property, the said loan amount was paid to the 1st plaintiff in lieu of her share amount, thereafter, the 1st defendant only redeemed the mortgage, therefore, the 1st plaintiff has no right over the property. Admittedly, the 1st defendant has not obtained the deeds from the 1st plaintiff for relinquishing all her shares. Further the mortgage deed, the Ex.B.2 would show that both the 1st plaintiff and the 1st defendant had jointly executed mortgage deed in favour of Co-operative Society and Ex.B.5 would show that the said mortgage was redeemed



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on 19.07.2013 by both the 1st plaintiff and the 2nd defendant. Therefore,

the contention of the 1st defendant is not acceptable and the 1st defendant has failed to prove his contention. Further, the learned counsel appearing for the appellants relied on **Judgment of this Court in A.S.No.249 of 1996 dated 27.06.2022 reported in MANU/TN/5005/2022 [Lakshmanan and Ors. Vs. B.Bhaskaran and Ors.]**. On a careful perusal of the above said Judgment, it is clear that once it is admitted that suit properties are ancestral properties and enjoyed as joint family properties in the absence of any partition to be relinquished, the plaintiff cannot be said to be lost his right by way of ouster / adverse possession. Therefore, the trial court after elaborate discussion and analysing the evidences has rightly decreed the suit, however, the First Appellate Court without any evidence came to the conclusion that the 1st plaintiff failed to pay mortgage money to the 1st defendant, who redeemed the mortgage. There is no evidence adduced by the 1st defendant to that effect, whereas Ex.B.5 shows that the mortgage deed was cancelled by the 1st plaintiff and the 1st defendant. Without considering the same, the First Appellate Court had set aside the decree and judgment of the trial court.

13. As far as the Substantial Question of Law: (a) *Whether the defendants are entitled to succeed on the basis of their stand in the oral*



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evidence when they could not have been permitted to lead any evidence for want of any specific pleadings? is concerned,

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The defendants have taken a plea that he mortgaged the property along with 1st plaintiff and the mortgaged money was paid to the 1st plaintiff. Further, the 1st plaintiff has not contributed for the discharge of mortgage and the 1st defendant alone discharged the mortgage loan. The 1st plaintiff after receipt of money through mortgage released her share to the 1st defendant. Therefore, the 1st defendant has to prove that the 1st plaintiff released her share to him after receipt of money. The 1st defendant has stated in the Written Statement that the entire mortgage money was paid to the 1st plaintiff. But the Ex.B2 revealed that the 1st plaintiff and the 1st defendant jointly mortgaged the property; Further Ex.B5 also revealed that the mortgage was discharged jointly by the 1st plaintiff and the 1st defendant. The trial court considered the said documents and the evidence adduced on both sides. There are no pleadings that the 1st defendant alone redeemed the mortgage and without pleadings the defendants were permitted to lead evidence. The First Appellate Court relied on the above said oral evidence of defendants without considering Ex.B.5 and came to the erroneous conclusion. Therefore, without any pleadings, the 1st defendant cannot adduce evidence and in the absence of specific plea, evidence of defendants is not acceptable and the defendants are not entitled to



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succeed on the basis of their stand in the oral evidence when they could not have been permitted to lead any evidence for want of any specific pleadings. Thus the Substantial Question of Law (a) is answered.

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14. Answers for Substantial Question of Law (b) '*Whether the plaintiffs can be non-suited in view of the stand taken by the defendants that the entire mortgage amount had been given to the 1st plaintiff, in the absence of any proof or legal evidence, particularly when the 1st plaintiff and the 1st defendant had jointly executed and later redeemed the mortgage under Ex.B.2 and Ex.B.5 respectively?*' is concerned,

According to the defendants, they mortgaged the suit property and paid the entire money to the 1st plaintiff, there is no evidence to that effect, whereas Ex.B.2 shows that the 1st plaintiff and the 1st defendant jointly mortgaged the property and borrowed money. Ex.P.5 shows that the mortgage money was settled to the Bank jointly by the 1st plaintiff and the 1st defendant, therefore, the defendants failed to prove that the entire mortgage money was paid to the 1st plaintiff and she has not contributed to redemption of mortgage. After accepting the Ex.B2 and B.5, the 1st defendant cannot deny those documents and he cannot be permitted to adduce contra evidence after admitting the Ex.B.2 and Ex.B.5. Thus the Substantial question of Law (b) is answered.



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15. Answers for Substantial Question of Law (c): *Whether in law*

the first appellate court is not in overlooking that the settlement deed dated 19.05.1972 (Ex.A.3) is void in law as per the decision of the Hon'ble Supreme Court reported in Thamma Venkatasubbama case reported in AIR 1987 SC 1775?"

It is an admitted fact that the property belonged to Ramasamy Reddy and he died intestate leaving behind his wife Chinnammal and the 1st plaintiff and the 1st defendant as his legal heirs to succeed his estate. The said Chinnammal, who is the wife of Ramasamy Reddy, one of the legal heir having definite share in the property, can execute settlement deed in respect of her share. The suit property is not ancestral coparcenary property and the property is separate property of Ramasamy Reddy and after his demise, the parties are equally entitled to 1/3rd share and the plaintiff also not disputed the settlement deed executed by her mother, Chinnammal in favour of the 1st defendant. Therefore, the case law reported in **AIR 1987 SC 1775 Thamma Venkatasubbamma** will not apply to the present facts and circumstances of the case and the plaintiffs have not even questioned the execution of settlement between the parties, therefore, the said case law reported in **AIR 1987 SC 1775 [Thamma Venkata Subbamma (Dead) by L.R., Vs. Thamma Rattamma & Ors.,]** is no



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way relevance to this case. Thus the Substantial Questions of Law is answered.

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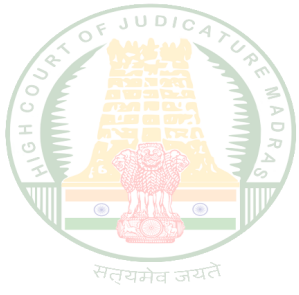
16. In view of the above said discussions and the answers to the Substantial Questions of Law, the Second Appeal is allowed and the Decree and Judgment passed by the First Appeal in A.S.No.442 of 2011 dated 12.03.2015 is set aside and the Judgment and decree passed by the trial court is O.S.No.51 of 2008 dated 16.12.2010 is restored. Consequently, connected miscellaneous petition is closed. No costs.

26.11.2025

Index:Yes/No
Internet:Yes/No
Speaking / Nonspeaking order
ssd

To

1. The Second Additional Judge,
City Civil Court, Chennai
2. The Second Assistant Judge,
City Civil Court, Chennai.



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P.DHANABAL, J.

ssd

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