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A.S. Nos. 313 to 315 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.11.2025
PRONOUNCED ON : 19.06.2026

CORAM:

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

A.S. Nos. 313 to 315 of 2019

A.S. No. 313 of 2019:-

Raji Pillai
S/o.Late.Poongavanam, Kilsathamangalam Village ,
(near The Pachiamman Temple) Vandavasi Tk,
Thiruvannamalai District.

..Appellant(s)

Vs

1. Shanmugam
S/o.Poongavanam Pillai, Kilsathamangalam
Village , (near The Pachiamman Temple),
Vandavasi Tk, Thiruvannamalai District.
2. Rajaram
S/o.Late Poongavanam Pillai, Kilsathamangalam
Village, (near The Pachiamman Temple),
Vandavasi Tk, Thiruvannamalai District.

..Respondent(s)

PRAYER in A.S.: To set aside the common Judgment and Decree in OS.No.78/2017 on the file of the Addl. District Judge, Arani.

For Appellant(s): M/s.C.Thangavel
K.Selvakumar
V.Paul Das



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For Respondent(s): M/s.V.Srimathi For R1

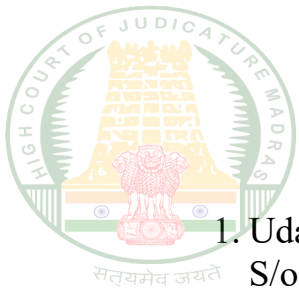
R2-No appearance

A.S. No. 314 of 2019:-

1. Raji Pillai
S/o Late Poongavanam, Kilsathamangalam
Village, (near The Pachiamman Temple),
Vandavasi Tk, Tiruvannamalai Dist.
2. Malar
W/o. Rajipillai, Kilsathamangalam Village, (near
The Pachiamman Temple), Vandavasi Tk,
Tiruvannamalai Dist.
3. Thirumal
S/o. Rajipillai, Kilsathamangalam Village, (near
The Pachiamman Temple), Vandavasi Tk,
Tiruvannamalai Dist.
4. Gnanaprakasam
S/o. Rajipillai, Kilsathamangalam Village, (near
The Pachiamman Temple), Vandavasi Tk,
Tiruvannamalai Dist.
5. Kesavan
S/o. Rajipillai, Kilsathamangalam Village, (near
The Pachiamman Temple), Vandavasi Tk,
Tiruvannamalai Dist.

..Appellant(s)

Vs



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1. Udayakumar
S/o. Shanmugam, Kilsathamangalam Village,
(near The Pachiamman Temple), Vandavasi Tk,
Tiruvannamalai Dist.
2. Rajaram
S/o. Poongavanam, Kilsathamangalam Village,
(near The Pachiamman Temple), Vandavasi Tk,
Tiruvannamalai Dist.
3. Ranjanidevi
W/o. Rajaram, Kilsathamangalam Village, (near
The Pachiamman Temple), Vandavasi Tk,
Tiruvannamalai Dist.
4. Vinothkumar
S/o. Rajaram, Kilsathamangalam Village, (near
The Pachiamman Temple), Vandavasi Tk,
Tiruvannamalai Dist.

..Respondent(s)

PRAYER in A.S.: To set aside the common Judgment and Decree in OS.No.79/2017 on the file of the Addl. District Judge, Arani.

For Appellant(s): M/s.Thangavel G.
V. Paul Das
Selvakumar K.

For Respondent(s): M/s.V.Srimathi For R1
R2to R4-No appearance

A.S. No. 315 of 2019:-

Raji Pillai
S/o.Late.Poongavanam, Kilsathamangalam Village ,
(near The Pachiamman Temple) Vandavasi Tk,
Thiruvannamalai District.

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..Appellant(s)

Vs

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1. Shanmugam
S/o.Poongavanam Pillai, Kilsathamangalam
Village , (near The Pachiamman Temple),
Vandavasi Tk, Thiruvannamalai District.
2. Udayakumar
S/o. Shanmugam, Kilsathamangalam Village,
(near The Pachiamman Temple) Vandavasi Tk,
Thiruvannamalai District.

..Respondent(s)

PRAYER in A.S.: To set aside the common Judgment and Decree in OS.No.77/2017 on the file of the Addl. District Judge, Arani.

For Appellant(s): M/s. G.Thangavel
K.Selvakumar
V.Paul Das in all cases.

For Respondent(s): M/s.V.Srimathi For R1
R2- No appearance

COMMON JUDGMENT

These appeals arise from the common judgment and decree dated 28.02.2019 passed in O.S.Nos.77, 78 and 79 of 2017 on the file of the learned Additional District Judge, Fast Track Court, Arani. A.S.No.313 of 2019 has been filed by the plaintiff in O.S.No.78 of 2017; A.S.No.314 of 2019 has been filed by defendants 1 to 5 in O.S.No.79 of 2017; and



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A.S.No.315 of 2019 has been filed by the plaintiff in O.S.No.77 of 2017.

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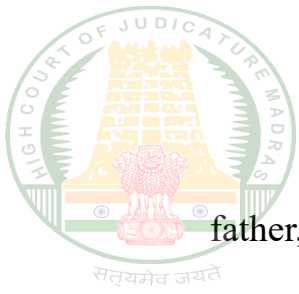
As all the three appeals arise out of the same common judgment and decree, they were heard together and are disposed of by this common judgment.

2. For the sake of convenience, the parties are referred to as per their array in O.S.No.79 of 2017.

3. The plaint averments in O.S.No.79 of 2017, in brief, are as follows:
The suit schedule property is presently comprised in Survey No.5/2B3, measuring 0.18.5 hectare, and originally formed part of old Survey No.5/2B, measuring 3.79 acres. According to the plaintiff, the suit property, along with other properties, constituted the joint family properties of Poongavanam and his family members. The plaintiff's father, Shanmugham and the 1st defendant as well as the 6th defendant are the sons of the said Poongavanam.

4. On 01.12.1980, a partition was effected among the family members of Poongavanam under a registered partition deed. In the said partition, the property comprised in Survey No.5/2B, measuring 3.79 acres, along with certain other properties, was allotted to the share of the plaintiff's

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father, Shanmugham. The 1st and 6th defendants were allotted separate properties towards their respective shares. Pursuant to the partition deed dated 01.12.1980, the plaintiff's father took possession of the suit property and enjoyed the same by paying the necessary taxes to the Government.

5. Subsequently, Survey No.5/2B was subdivided by the Revenue Department into six subdivisions, namely Survey Nos.5/2B1 to 5/2B6. The disputed property is comprised in Survey No.5/2B3. Separate Patta No.252 was also issued in favour of Shanmugham.

6. The plaintiff's father applied for building plan approval in respect of Survey Nos.5/2B3 and 5/2B6. In the year 2000, he constructed houses in both the survey numbers. The old building existing in the suit property was in a dilapidated condition and, therefore, was not specifically mentioned in the partition deed dated 01.12.1980.

7. The plaintiff's paternal grandfather, Poongavanam, died intestate in the year 1993. Thereafter, the plaintiff's father permitted the 1st and 6th defendants to occupy the ground floor and upstairs portion of the suit building until they completed construction of houses in the properties

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allotted to their respective shares. Thus, the 1st and 6th defendants were only permissive occupants of the suit property. However, despite repeated requests made by the plaintiff's father, they failed to vacate the premises.

8. In the meanwhile, the plaintiff's father executed a registered settlement deed dated 22.10.2012 in favour of the plaintiff. The plaintiff accepted the settlement and took symbolic possession of the suit property. Hence, the suit was filed seeking declaration of title and recovery of possession.

9. The averments in the written statement filed by the 1st defendant and adopted by defendants 2 to 5 in O.S.No.79 of 2017, in brief, are as follows: The partition deed dated 01.12.1980 is admitted. According to these defendants, the suit house was allotted for the common residential use of all the family members. The 1st defendant is residing on the ground floor and the 6th defendant is residing in the upstairs portion. The plaintiff's father was residing in another portion of the house. Even after the partition, their parents also resided in the suit property for some time.

10. According to the defendants, the allotment of the property in Survey No.5/2B in favour of the plaintiff's father excluded the suit house 7/32



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property. This, according to them, is the reason, that the plaintiff's father remained silent from 1980 to 1994.

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11. The defendants further contend that the suit building was constructed in the year 1976, and that another house was constructed in Survey No.5/2B6. Therefore, according to them, the plaintiff's contention that the houses were constructed after obtaining building approval from the Municipality is incorrect.

12. It is further stated that the 1st defendant had earlier filed a suit for injunction against the plaintiff's father, seeking to restrain him from interfering with his possession.

13. The averments in the written statement filed by the 6th defendant and adopted by defendants 7 and 8 in O.S.No.79 of 2017, in brief, are as follows: According to these defendants, Poongavanam constructed houses in Survey No.5/2B, measuring 3.79 acres, in the year 1976, one on the western side and the other on the eastern side of the road. All the family members resided jointly in the said houses.

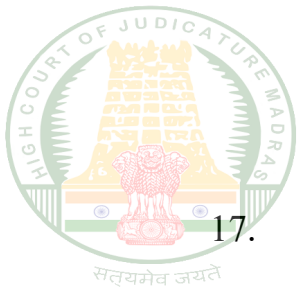


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14. Since Poongavanam owned several properties, and having regard to the provisions of the Land Ceiling Act, the partition deed was executed to settle the properties in the names of the family members. Even after the execution of the partition deed, all the properties continued to be enjoyed by Poongavanam until his death in the year 1993.

15. It is stated that the partition deed dated 01.12.1980 was only a nominal document and, therefore, the houses already in existence were not shown therein. After the death of Poongavanam, Survey No.5/2B, measuring 3.79 acres, was subdivided. In respect of subdivided Survey No.5/2B3, joint patta was issued in the names of the sons of Poongavanam. Therefore, according to the defendants, the property comprised in Survey No.5/2B3 is the common property of all the three sons of Poongavanam.

16. It is further alleged that, on 12.05.1994, the patta was wrongly transferred in the name of Shanmugham on the basis of false representations. Subsequently, pursuant to an appeal preferred before the District Collector, the joint patta was restored.



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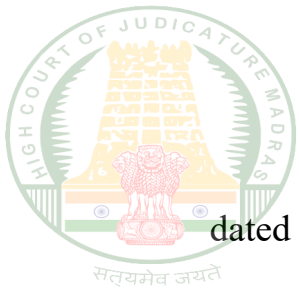
17. The 6th defendant has also obtained a separate service connection.

According to the defendants, the house building in the suit property has been in existence from the year 1976 and, therefore, the plaintiff is not entitled to seek eviction of these defendants. It is further stated that defendants 7 and 8 are unnecessary parties, as they are residing along with the 6th defendant. Hence, the suit is liable to be dismissed.

18. The plaint averments in O.S.No.77 of 2017, in brief, are as follows: The plaintiff and the 1st defendant are brothers, and the 2nd defendant is the son of the 1st defendant. The upstairs portion of the suit building was constructed by the plaintiff's father Poongavanam in the year 1976. The plaintiff has been residing on the ground floor, while his brother Rajaram has been residing in the upstairs portion, for the past 35 years.

19. The plaintiff has been paying the house tax and electricity charges. The joint patta for the suit property stands in the names of the sons of Poongavanam. A separate house was constructed in Survey No.5/2B6 for the 1st defendant, where he is presently residing.

20. The plaintiff had earlier filed a suit for injunction against the 1st defendant. Subsequently, the 1st defendant executed a settlement deed 10/32



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dated 22.10.2012 in favour of his son, the 2nd defendant. It is alleged that the 2nd defendant is attempting to alienate the property to third parties.

Hence, the suit was filed seeking a permanent injunction restraining alienation of the suit property.

21. The averments in the written statement filed by the 1st defendant adopted by 2nd defendant in O.S.No.77 of 2017, in brief, are as follows: The suit is false and vexatious. The allegation that the defendants are attempting to alienate the suit property to third parties is denied. According to the 1st defendant, he obtained the suit property and other properties under the registered partition deed dated 01.12.1980 executed among himself, the plaintiff, another brother and others. Having executed and acted upon the said partition deed, the plaintiff is estopped from questioning the same. Hence, the suit is liable to be dismissed.

22. The plaint averments in O.S.No.78 of 2017, in brief, are as follows: The plaintiff and the defendants are brothers. The suit property originally belonged to their father, Poongavanam Pillai, who constructed the suit house in the year 1976. Their father permitted the plaintiff to occupy the ground floor and the 2nd defendant to occupy the upstairs portion, and they have been residing therein for the past 33 years.

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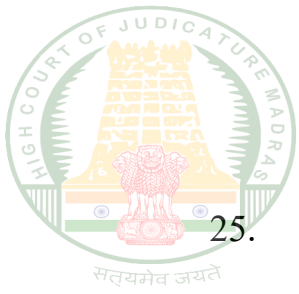


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23. To avoid future disputes, Poongavanam arranged for the patta to stand jointly in the names of his three sons. Poongavanam died in the year 1993. The plaintiff claims to have been in peaceful enjoyment of the suit property without interference from the defendants. However, on 03.01.2010, allegedly at the instigation of the 2nd defendant, the 1st defendant attempted to disconnect the water supply connection. Hence, the suit was filed seeking an injunction.

24. The averments in the written statement filed by the 1st defendant adopted by 2nd defendant in O.S.No.78 of 2017, in brief, are as follows: The relationship between the parties, as pleaded in the plaint, is admitted. It is denied that the suit house was constructed by Poongavanam in the year 1976. According to the 1st defendant, the plaintiff and the 2nd defendant are residing in the suit property only with his permission. It is further stated that the suit property exclusively belongs to the 1st defendant and that the patta also stands in his name. Since the plaintiff and the 2nd defendant are his brothers, they were permitted to reside in the suit property. Hence, the suit is liable to be dismissed.



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25. The trial Court, after framing the necessary issues and conducting a joint trial, examined P.Ws.1 and 2 and marked Exs.A1 to A14 on the side of the plaintiffs. On the side of the defendants, D.Ws.1 to 3 were examined and Exs.B1 to B15 were marked. By common judgment dated 28.02.2019, O.S.No.79 of 2017 was decreed, declaring the plaintiff's title and directing the defendants to vacate and hand over possession of the suit property within one month. The other two suits, namely O.S.Nos.77 and 78 of 2017, were dismissed with costs.

26. Grounds raised in A.S. Nos. 313, 314 and 315 of 2019: The Trial Court failed to properly appreciate the pleadings, oral evidence and documentary evidence available on record. It is the case of the appellant that the suit property was constructed by the father of the parties and was enjoyed as common family property by all the three brothers, and that the appellant has been in possession and enjoyment of the property for several decades. The appellant further contends that the first respondent wrongly claimed exclusive right over the property and obtained separate patta, whereas the revenue authority subsequently rectified the mistake and restored the joint patta in favour of all the three brothers by order dated 10.03.2016. It is also contended that the partition deed dated 01.12.1980 did not confer exclusive right over the house property on the

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first respondent. According to the appellant, the Trial Court, without considering these material facts and without properly analysing the evidence, erroneously dismissed O.S.No.78 of 2017 and the connected suit filed by the appellant, while allowing O.S.No.79 of 2017 filed by the respondent, thereby causing serious prejudice to the appellant.

27. The learned counsel appearing for the appellant/defendant submitted that the Trial Court erred in passing the common judgment and decree dated 28.02.2019 in O.S.Nos.77, 78 and 79 of 2017 without properly appreciating the pleadings, oral evidence and documentary evidence available on record. It was submitted that the appellant has been in lawful possession and enjoyment of the suit property along with his family for several decades and that the property was constructed by the father of the appellant for the benefit and livelihood of the three brothers.

28. The learned counsel further submitted that the first respondent/plaintiff, by suppressing the real facts, attempted to claim exclusive right over the schedule property and had obtained separate patta by misleading the revenue authorities. However, the revenue authorities subsequently rectified the mistake and restored the joint patta in respect of all the three brothers by order dated 10.03.2016. The said order was 14/32

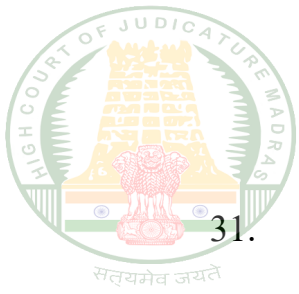


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not challenged by the first respondent within the prescribed period and therefore, the first respondent is deemed to have accepted the joint nature of the property.

29. It was also contended that the Trial Court failed to appreciate that the partition deed dated 01.12.1980 did not partition the house property. The partition was only with respect to the land and the built-up house was retained for common enjoyment of the family members. The learned counsel submitted that the existing house property continued to be enjoyed commonly by all the brothers and their family members and that there was no evidence to show that the house property was separately allotted to the first respondent.

30. The learned counsel further submitted that the evidence of Shanmugam, who was examined as PW2, clearly supports the appellant's case that the house was constructed in or about the year 1976 and was being enjoyed by all the three brothers. The Trial Court ought to have considered the said admission and the surrounding circumstances before holding against the appellant.



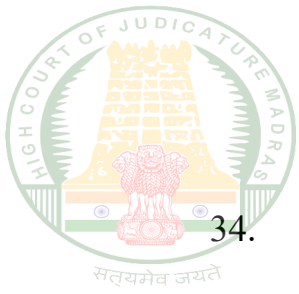
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31. It was further argued that the appellant/defendant had produced relevant documents to establish his possession and enjoyment of the suit property, including payment of property tax, electricity charges and other records. The Trial Court, without properly analysing those documents, erroneously concluded that the appellant had failed to prove his right and possession over the property.

32. The learned counsel also submitted that the suits filed by the appellant/defendant were necessitated only because the respondents/plaintiff attempted to interfere with his peaceful possession and enjoyment of the property and also attempted to encumber the same. Therefore, the Trial Court ought to have granted the reliefs sought for by the appellant instead of dismissing the suits filed by him.

33. It was further contended that the Trial Court erred in allowing O.S.No.79 of 2017 filed by the son of the first respondent and in directing the appellant to hand over possession within one month. Such a direction, according to the learned counsel, was passed without properly considering the appellant's long possession, the nature of the property, the common enjoyment by the family members and the availability of appellate remedies.

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34. Thus, the learned counsel for the appellant/defendant submitted that the findings of the Trial Court are contrary to the evidence on record and are liable to be set aside. Accordingly, it was prayed that the appeals be allowed, the common judgment and decree dated 28.02.2019 be set aside, the suits filed by the appellant be decreed, and O.S.No.79 of 2017 filed by the respondent be dismissed.

35. On contra, the learned counsel appearing for the respondents/plaintiffs submitted that the defendant had suppressed the material fact that an earlier suit in O.S.No.288 of 2000 had been filed before the Sub Court, Cheyyar, against the plaintiffs and another brother Rajaram, seeking partition, permanent injunction, damages and other reliefs in respect of the very same property. The said suit was dismissed on 04.04.2001 and no appeal or petition under Order IX Rule 9 CPC was filed. Therefore, according to the learned counsel, the appellant is bound by the earlier judgment and the subsequent suits filed by him are barred by the principles of res judicata and estoppel.

36. It was also submitted that the Trial Court, on appreciation of evidence, found that the appellant had filed the suits only to create dispute among the brothers. The documents produced by the respondents,
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particularly Exs.B5 to B8, B14 and B16, clearly establish the plaintiffs' title and enjoyment over the suit property.

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37. The learned counsel further contended that the Trial Court had rightly held that Raji Pillai and Rajaram and their family members had no right or title over the suit property and that the plea that they were residing in the property from the year 1976 was not established by acceptable evidence. Therefore, O.S.No.77 of 2017 and O.S.No.78 of 2017 were rightly dismissed with costs.

38. The learned counsel also submitted that in O.S.No.79 of 2017, the Trial Court, having found the plaintiff's title and entitlement to possession, rightly granted the relief of declaration and delivery of possession and directed the defendant therein to vacate and hand over possession.

39. It was finally submitted that the grounds raised in the appeals are vague and are only a repetition of the pleadings before the Trial Court. No substantial or cogent ground has been made out to interfere with the well-reasoned findings of the Trial Court. Hence, the learned counsel prayed that all the appeals may be dismissed with exemplary costs.

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40. The points for consideration in A.S.No.314 of 2019 are as follows:

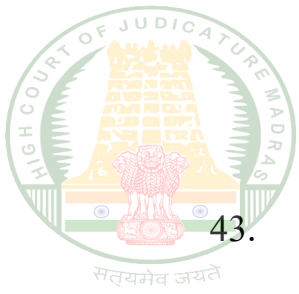
1. Whether, under the partition deed dated 01.12.1980, the property comprised in S.No.5/2B, measuring 3.79 acres, was allotted to the plaintiff's father, excluding the suit house property?
2. Whether the partition deed dated 01.12.1980 is only a nominal document and was not acted upon?
3. Whether the plaintiff is entitled to a declaration of title?
4. Whether the defendants are liable to be evicted from the suit property?
5. Whether the Judgment and Decree of the trial court are liable to be set aside?

41. The points for consideration in A.S.No.313 of 2019 are as follows:

1. Whether the plaintiff is entitled to the relief of permanent injunction?
2. Whether the Judgment and Decree of the trial court are liable to be set aside?

42. The points for consideration in A.S.No.315 of 2019 are as follows:

1. Whether the defendants are liable to be restrained from alienating the suit property?
2. Whether the Judgment and Decree of the trial court are liable to be set aside?



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43. Defendants 1 to 5 in O.S.No.79 of 2017 have filed A.S.No.314 of 2019, while defendants 6 to 8 have not preferred any appeal. The plaintiff in O.S.No.78 of 2017 has filed A.S.No.313 of 2019, and the plaintiff in O.S.No.77 of 2017 has filed A.S.No.315 of 2019. As all the appeals arise from the common judgment dated 28.02.2019, they are disposed of by this common judgment.

44. Further, the outcome of A.S.Nos.313 and 315 of 2019 depends upon the decision in A.S.No.314 of 2019. Hence, A.S.No.314 of 2019 is taken up first for consideration.

45. Point No.1 in A.S.No.314 of 2019: The relationship among the parties is admitted. The plaintiff's father, Shanmugham, and defendants 1 and 6 are the sons of Poongavanam. The suit property and other properties were Hindu undivided joint family properties, managed by Poongavanam as Karta of the family. On 01.12.1980, a registered partition deed, marked as Ex.A9, was executed among the Karta Poongavanam and his children. Under the said partition deed, the 'E' Schedule property was allotted to the plaintiff's father. The 'E' Schedule includes the property comprised in Survey No.5/2B, measuring 3.79 acres. A house building is situated in the said property. Subsequently, the



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said extent of 3.79 acres was subdivided into Survey Nos.5/2B1 to 5/2B6, and the portion in which the house building is situated was subdivided as Survey No.5/2B3. These facts are admitted by both sides. It is also admitted by both sides, and is borne out by the records, that the house building was not specifically mentioned in the partition deed dated 01.12.1980.

46. According to the plaintiff, the building existing in the suit property at the time of partition was in a dilapidated condition and, therefore, it was not specifically mentioned in the partition deed, Ex.A9. After the demise of Poongavanam in the year 1993, the plaintiff's father, Shanmugham, constructed the existing house in the year 2000 and permitted defendants 1 and 6, being his brothers, to reside therein as permissive occupants. Subsequently, the permission was revoked and the defendants were called upon to vacate the premises. However, the defendants denied the title of the plaintiff and his father over the suit property. Hence, the suit came to be filed.

47. On the side of the 1st defendant, it is contended that the suit house was constructed by their father, Poongavanam, in the year 1976 and that the family had been residing therein ever since. It is further contended

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that, even after the partition under Ex.A9, Poongavanam continued to reside in the suit property and permitted the 1st defendant to occupy the ground floor and the 6th defendant to occupy the first-floor portion. According to the 1st defendant, the plaintiff's father was residing in another house constructed by Poongavanam in Survey No.5/2B6. Even after the demise of Poongavanam in the year 1993 intestate, defendants 1 and 6 continued to remain in occupation of the suit house. According to the 1st defendant, these circumstances would show that the allotment made in favour of the plaintiff's father in Survey No.5/2B, measuring 3.79 acres, excluded the suit property.

48. The point that arises for consideration is whether the property allotted to the plaintiff's father under the 'E' Schedule to Ex.A9, comprised in Survey No.5/2B, covers the entire extent of 3.79 acres, or whether it excludes an extent of 0.18.5 ares, equivalent to 44 cents.

49. In Ex.A9 partition deed, the property is described as "Punja Survey No.5/2B – 3.79 acres, Thirvai Rs.4.02." There is no exclusion of any portion from the said extent of 3.79 acres. Nor is there any reference to the house building situated therein. It appears that the property was treated and described as agricultural land. According to the 1st defendant,

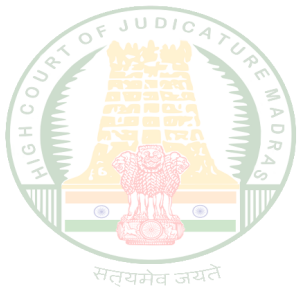
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the non-mention of the house building in the partition deed amounts to exclusion of the house property from the allotment made in favour of the plaintiff's father. This contention cannot be accepted. If the parties to the partition deed had intended to exclude the suit property, measuring about 44 cents, from the total extent of 3.79 acres, such exclusion would have been specifically recorded. On the contrary, a plain reading of Ex.A9 indicates that the parties intended to allot the entire extent of 3.79 acres in Survey No.5/2B to the plaintiff's father.

50. Under the general principles of property law, where a specific survey number or parcel of land is allotted to a sharer under a partition deed, such allotment ordinarily carries with it everything permanently attached to the land, unless a contrary intention is expressly stated in the document. A house standing on the land is generally treated as part of the immovable property. Therefore, where the survey number itself was exclusively allotted to one son, the building standing thereon would ordinarily pass along with the land to him, even if the partition deed does not separately describe the house. This principle flows from the maxim *quicquid plantatur solo, solo cedit* — whatever is attached to the soil becomes part of the soil.



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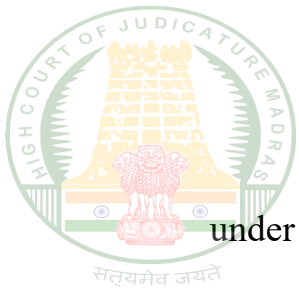
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51. Under the Transfer of Property Act, “immovable property” includes benefits arising out of land and things attached to the earth. A residential house permanently attached to the land forms part of the land itself. Therefore, where the partition deed clearly allots the entire survey number to one son, without any reservation in respect of the house or any clause retaining joint ownership over the superstructure, the normal legal inference is that both the land and the house vested in the allottee.

52. Merely because the family members continued to reside together for some time after the partition, or until the demise of the father, or even continued in occupation thereafter, such circumstances by themselves would not revive or create co-ownership. At the highest, such continued occupation may amount to permissive possession. The omission to specifically mention the house does not dilute the allotment of the property, particularly when the house was already standing on the land at the time of partition, the land and house formed one integral unit, and the survey number itself sufficiently identified the property allotted.

53. In the above circumstances, this Court holds that the suit property formed part of the property allotted to the share of the plaintiff’s father

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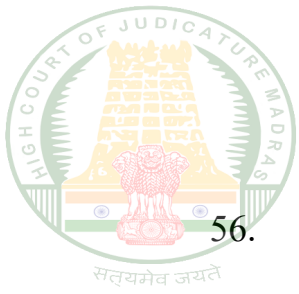


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under Ex.A9 partition deed, inclusive of the entire extent of 3.79 acres in Survey No.5/2B. This point is answered accordingly.

54. Point No.2 in A.S.No.314 of 2019: On the side of the 6th defendant, the execution of the partition deed, Ex.A9, among the family members of Poongavanam is admitted. However, it is contended that the partition deed was executed only due to the advent of the Land Ceiling Act, as several properties stood in the name of their father, Poongavanam. According to the 6th defendant, even after execution of the partition deed, the properties continued to be enjoyed by Poongavanam himself. It is further stated that, since the partition deed was only a nominal document, the existing house building was not specifically referred to therein.

55. The 6th defendant has also contended that, after the demise of Poongavanam, the property comprised in Survey No.5/2B was subdivided and, in respect of the subdivided property bearing Survey No.5/2B3, patta was issued jointly in the names of the sons of Poongavanam. Therefore, according to him, the suit property is the common/joint property of the sons of Poongavanam.



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56. The 6th defendant has pleaded that Ex.A9 partition deed is only a nominal document and was never acted upon. If that were so, he ought to have ignored Ex.A9 in its entirety and, after the intestate death of Poongavanam, sought partition of all the properties left behind by Poongavanam. No such suit has been filed, nor has any claim for partition been made on that basis.

57. Under Ex.A9 partition deed, the 'F' Schedule properties were allotted to the share of the 6th defendant, and he admittedly took possession of those properties and has been enjoying them independently. Likewise, under Ex.A9, the 'D' Schedule properties were allotted to the 1st defendant, who also took possession and has been enjoying them separately. Having accepted and acted upon the allotment made in his favour under Ex.A9, the 6th defendant cannot now contend that the partition deed is merely nominal. He cannot be permitted to approbate and reprobate. If he seeks to deny Ex.A9, he must deny it in its entirety; he cannot accept the portions beneficial to him and reject the portions unfavourable to him.

58. Further, an extent of 0.48 cents comprised in subdivided Survey Nos.5/2B2B, 5/2B3B, 5/2B4 and 5/2B5B, forming part of Survey 26/32



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No.5/2B, was gifted by the plaintiff's father in favour of the Highways Department under Ex.A14 dated 10.05.2012. Had Ex.A9 partition deed not been acted upon, the plaintiff's father alone could not have executed such a gift deed in respect of the said property. This circumstance clearly shows that Ex.A9 was recognised and acted upon even by the donee under Ex.A14, who obtained the gift deed exclusively from the plaintiff's father. These transactions clearly establish that Ex.A9 partition deed was genuine, acted upon, and given effect to by the parties concerned. This point is answered accordingly.

59. Point Nos.3 and 4 in A.S.No.314 of 2019: The plaintiff is the son of Shanmugham, to whom the 'E' Schedule property was allotted under the partition deed, Ex.A9. Subsequently, Shanmugham executed a settlement deed, Ex.A1 dated 22.10.2012, in favour of the plaintiff in respect of the suit property. The validity of the said settlement deed stands established, particularly in view of the admission of the executant himself, who was examined as P.W.2.

60. The contention that the patta stands in the joint names of the sons of Poongavanam does not, by itself, stand in the way of settlement of the property in favour of the plaintiff. Patta is not a document of title; at best,
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it is a revenue record evidencing possession or enjoyment. There is no dispute that the defendants are in physical possession of the suit property.

The dispute is only as to the character of such possession. According to the plaintiff, the defendants are in occupation only as permissive occupants, whereas defendants 1 and 6 claim to be in possession as co-owners or joint owners of the property.

61. As already held while answering Point No.1, defendants 1 and 6 are only permissive occupants of the suit property. Once such permission is revoked, they are bound to vacate and hand over possession to the true owner. In the above circumstances, this Court holds that the plaintiff is entitled to the relief of declaration of title, and that the defendants are liable to vacate and deliver possession of the suit property. These points are answered accordingly.

62. Point No.5 in A.S.No.314 of 2019: In view of the findings rendered on Point Nos.1 to 4, this Court finds no reason to interfere with the judgment and decree passed by the trial Court in O.S.No.79 of 2017, and the same are hereby confirmed. The defendants are directed to quit and deliver vacant possession of the suit schedule property under their occupation within a period of three months from the date of this appellate
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judgment. Considering the close relationship between the parties, there shall be no order as to costs.

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63. Point Nos.1 and 2 in A.S.Nos.313 and 315 of 2019: In view of the findings rendered on the points arising in A.S.No.314 of 2019, this Court holds that the plaintiff is the absolute owner of the suit property and that defendants 1 and 6 are only permissive occupants thereof. Once such permission is revoked, the permissive occupant has no right to continue in possession, and his possession thereafter becomes unlawful. Consequently, he cannot seek an injunction against the true owner.

64. The 1st defendant, who is the plaintiff in O.S.No.78 of 2017, has averred that the respondent attempted to disconnect the water supply. The said allegation has been denied by the defendant. Be that as it may, in the facts and circumstances of the case, the relief of injunction sought against the true owner is not legally sustainable.

65. Similarly, in respect of O.S.No.77 of 2017, this Court has already found that the plaintiff is the lawful owner of the suit property and has valid title thereto. He is, therefore, entitled to deal with the property in any manner permissible under law. Hence, the relief of injunction

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restraining him from dealing with the property cannot be granted.

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66. In the above circumstances, the reliefs of injunction sought in the respective suits cannot be granted. Accordingly, this Court holds that the judgments and decrees passed by the trial Court in O.S.Nos.77 and 78 of 2017 are liable to be confirmed. These points are answered accordingly.

67. In fine, the common judgment and decrees dated 28.02.2019 passed by the learned I Additional Judge, Arani, are hereby confirmed. Consequently, all the three appeals are dismissed. Defendants 1 to 8 in O.S.No.79 of 2017 are directed to quit and deliver vacant possession of the suit properties within a period of three months from today. In the circumstances of the case, there shall be no order as to costs. Connected miscellaneous petitions, if any stand closed.

19.06.2026

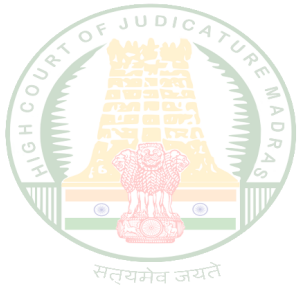
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Index: Yes/No

Speaking Order /Non-speaking order

Neutral citation: Yes/No

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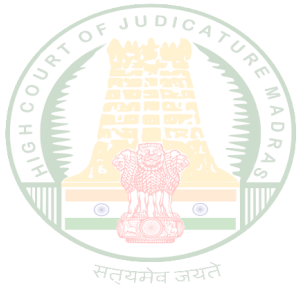


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WEB COPY **To**

1. The Additional District Judge,
Fast Track Court, Arani.

2. The Section Officer,
V.R.Records,
Madras High Court.



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DR. A.D. MARIA CLETE, J

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PRE DELIVERY JUDGMENT
A.S. Nos. 313 to 315 of 2019

19.06.2026