



S. A(MD)No.281 of 2007

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated 13.03.2026

CORAM:

THE HONOURABLE Mr.JUSTICE N.ANAND VENKATESH

SA. (MD)No.281 of 2007

PL.Ragunathan

.. Appellant/Plaintiff

Vs.

1.SP.Periakaruppan ambalam

2.MR.Subbaiah

3.M.Pandivel

4.S.Perianayagi

5.S.Kunjaram

W/o.Shanmugam

6.S.Pandimeena

7.Athiyappan

8.Muthu

9.Saravanan

10.Chithra

11.Meenal

1/10



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WEB COPY 12.Sornavalli

13.Kunjaram

W/o.Sivaraman

... respondents/defendants

Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 19.07.2006 in in AS No.37/2005 on the file of the Sub Court, Devakottai, confirming the judgment and decree passed in OS No.55/2000 dated 11.02.2005 on the file of the District Munsif, Devakottai.

For Appellant	: Mr.R.Sundar Srinivasan
For Respondent	: Mr.AL.Vijaydevaraj for R2

JUDGMENT

The second appeal has been filed against the judgment and decree passed by the learned Subordinate Judge, Devakottai dated 19.07.2006 in AS No.37/2005 confirming the judgment and decree of the District Munsif, Devakottai, in OS NO.55/2000 dated 11.02.2005.

2.The plaintiff is the appellant in this case.



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3. The case of the plaintiff is that the suit A schedule property is the western side property of the entire schedule property comprised in TS No. 26, which belonged to Raghunathan Ambalam. He had three sons, namely, the father of the 2nd defendant, the first defendant and the father of the plaintiff. The further case of the plaintiff is that there was partition between the defendants 1 and 2 and a memorandum dated 01.03.1965 was entered into and in that memorandum, B Schedule was allotted to the father of the plaintiff. According to the plaintiff, it was 1/3rd share in the property, which is in the western portion of TS No.26.

4. The further case of the plaintiff is that the first defendant attempted to interfere with the peaceful possession and enjoyment of the suit 'A' schedule property. It is under these circumstances, the suit came to be filed for the relief of bare injunction or in the alternative for the relief of partition and for allotment of 1/3rd share in the 'B' schedule property.

5. The first defendant denied the very execution of the memorandum dated 01.03.1965 and also claimed adverse possession. Insofar as the



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second defendant is concerned, he also disputed the partition evidenced by memorandum dated 01.03.1965 and also claimed to be in possession of the 'A' schedule property.

6. The third defendant was impleaded as the legal heir of the first defendant and he took a stand that the settlement was executed by the 2nd defendant in favour of the 1st defendant by document dated 15.12.1973 and he also disputed the memorandum dated 01.03.1965.

7. The plaintiff before the trial Court examined himself as PW1 and marked Exs.A1 to A3. The third defendant examined himself as DW1 and marked Ex.B1 to B16.

8. The trial Court, on considering the facts and circumstances of the case and on appreciation of evidence, came to a conclusion that the plaintiff is not entitled for the relief sought for and accordingly dismissed the suit by judgment and decree dated 11.02.2005.



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WEB COPY 9. Aggrieved by the above judgment passed by the trial Court, the plaintiff filed an appeal before the Sub Court, Devakottai in AS No.37 of 2005. The appellate Court dismissed the appeal by judgment and decree dated 19.07.2006 and thereby confirming the judgment and decree passed by the trial Court. Aggrieved by the same, the present second appeal has been filed before this Court.

10. It is seen from the records that this Court had only issued notice in the second appeal and no substantial questions of law were framed.

11. In view of the above, this Court heard the learned counsel for the appellant in order to see if any substantial questions of law are involved in the second appeal.

12. The learned counsel for the appellant submitted that the factum of partition has been admitted by the defendant and hence, even assuming that Ex.A1 cannot be admitted, since it is not registered, the very admission on the part of the defendant entitles the appellant to seek for the relief of



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permanent injunction or at the least for the relief of partition and for allotment of 1/3rd share. The learned counsel, by pointing out the relevant finding of the trial Court and appellate Court, submitted that the second defendant did not even plead regarding the alleged inam settlement and all of a sudden came up with such a stand during trial and which was entertained by both the Courts below. Thus, it was contended that the findings rendered by both the Courts below is in total disregard of the evidence available on record and therefore, substantial question of law has to be framed with that as the basis.

13. This Court carefully went through the judgment passed by the trial Court as well as the lower appellate Court. Insofar as the trial Court is concerned, the trial Court has come to the conclusion that Ex.A1 dealt with partition of certain properties *in praesenti* and therefore, without the document being duly registered, it is not admissible in evidence. Apart from rendering such a finding, the trial Court took into consideration one important factor which is that after getting inam settlement, the plaintiff himself had assisted in execution of sale deeds, which were marked as



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Exs.B1 to B7. With such conduct on the part of the plaintiff, the trial Court came to the conclusion that the plaintiff is attempting to claim a right with respect to the eastern side of the property, which was already sold under Ex.B1 to Ex.B7. The trial Court also found that there was absolutely no material to show that the plaintiff at any point of time was in possession and enjoyment of the property and therefore, the trial Court rendered a finding that insofar as the relief of partition is concerned, the plaintiff ought to have paid the Court fee under Section 37(1) of the Tamil Nadu Court fees and Suit Valuation Act. Insofar as the appellate Court is concerned, even though the appellate Court rendered a finding to the effect that there was some division of property between the parties, the appellate Court also took into consideration Exs.B1 to B7, which are the sale deeds pertaining to S.No.26 and came to a conclusion that the plaintiff cannot claim any further right in the suit property. Apart from that, after having executed the document, there was no way that the plaintiff could be said to be in possession of any portion of the property.



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WEB COPY 14. The appellate Court found that there were lots of discrepancies in the extent of property that is actually available in S.No.26. The total extent of the property is 2 acres and 26.4 cents. Ultimately after dealing with the major portion of the properties, what was left out was under serious dispute. That apart, the appellate Court found that the properties were in possession of defendants 3 and 4 and therefore, there was no question of granting the relief of permanent injunction in favour of the plaintiff in the absence of any proof regarding the possession of the property.

15. In the considered view of this Court, the finding rendered both by the trial Court as well as by the appellate Court was on appreciation of evidence. This Court, while exercising its jurisdiction under Section 100 of the Code of Civil Procedure, cannot once again re-appreciate the evidence. A second appeal can be entertained only if it involves substantial question of law. In the case on hand, what is being attempted is to once again go into the evidence and to appreciate the purport of various documents which is totally impermissible while exercising the jurisdiction under Section 100 of CPC. Hence, this Court does not find any substantial question of law



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WEB COPY involved in the second appeal. Accordingly, the second appeal stands dismissed. No costs.

13.03.2026

NCC : Yes
Index : Yes
RR

To

1.The Sub Court, Devakottai.

2.The District Munsif, Devakottai.

3.The Record Keeper,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai.



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N.ANAND VENKATESH, J

RR

Judgment made in
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