



**S.A.No.846 of 2023**

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 27.11.2023**

**CORAM :**

**THE HONOURABLE MS.JUSTICE P.T.ASHA**

**S.A.No.846 of 2023**

1. Manickam
2. Muthuvedi Ammal
3. Rajeswari
4. M.Sathiyan
5. M.Aruna

...Appellants

Vs.

Govindan

... Respondent

**Prayer:-** This Second Appeal has been filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 30.07.2019 made in A.S.No.09 of 2016 on the file of the Principal Subordinate Judge, Krishnagiri, confirming the judgment and decree dated 19.11.2015 made in O.S.No.87 of 2010 on the file of the District Munsif Court, Krishnagiri.

For Appellant : Mr.R.Bharath Kumar



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## **J U D G M E N T**

The defendants are the appellants before this Court. The second appeal is filed challenging the judgment and decree passed in A.S.No.9 of 2016 by the learned Principal Subordinate Judge, Krishnagiri confirming the judgment and decree of the learned District and Sessions Judge, Krishnagiri in O.S.No.87 of 2010.

2. The brief facts which are necessary for disposing of this appeal are herein below set out. The parties are referred to in the same ranking as before the trial Court.

3.The plaintiff has filed the above referred suit for declaration and injunction against the defendants. It is their contention that the plaintiff and the first defendant are the brothers and sons of late Bosikutty @ Chinnapaiya Gounder. After the death of their father, the plaintiff, the first defendant and other co-sharers have partitioned and divided the ancestral properties in the year 1981 and since then,



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they have been living separately and enjoying their respective shares. The plaintiff is living separately and the defendants have no right over his property. The plaintiff would submit that after the partition, he has worked hard and has purchased the suit properties under 11 separate sale deeds and these properties are separate self acquired and independent properties. One of the suit properties comprised in S.No.373 measuring 0.07 ½ cents was purchased by the plaintiff from his own brother, Vadivelu under a registered Sale Deed dated 14.12.1984. The deed clearly states that the properties are ancestral properties which the vendor therein had got in a family partition. This will go a long way to prove that the plaintiff and his siblings have partitioned the property.

4. The first defendant, who is the brother of the plaintiff, had been educated and is working in the Revenue Department as Deputy Tahsildar. After purchasing the properties, the plaintiff had entrusted all the original documents to the first defendant for the purpose of mutating the revenue records. The first defendant has



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two wives. The second defendant is his first wife and the fourth defendant is her son. The third defendant is his second wife, and the fifth defendant is her son.

5. While so, three months ago, the defendants had been going around in the village, proclaiming that the suit properties belonged to them and that the patta stands in the name of the first defendant. On 01.03.2010, defendants 2 to 5 had attempted to trespass into it. This attempt was successfully prevented by the plaintiff and it was only then that he has come to learn that his brother, the Deputy Tahsildar has conveniently used the original documents to claim the title to the property. Therefore, the plaintiff has come forward with the suit.

6. The defendants have filed the written statement *inter-alia*, denying the contentions of the plaint and admitting the oral partition of the year 1981, but contending that the plaintiff and the first defendant continued to be joint even after the oral partition. He



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would submit that all the other properties have been purchased only from out of the income of the joint family. The first defendant would submit that since he is in a transferable job and not able to manage the joint family properties, it was the plaintiff who was managing the same both for himself and on behalf of the first defendant. The properties were purchased from out of the income arrived from the agricultural operations and the ancestral properties. Therefore, all the properties partook the character of a joint ancestral properties. Therefore, the defendant would submit that the plaintiff is not entitled to a declaration.

7. The trial Court had framed the following issues:

1. வாதிக்஑ு தாவா ஑ொத்துக்களில் தனிப்பட்ட உரிமைமூலம் ஏற்பட்டுள்ளதா?
2. வாதி கோரியுள்ள நிரந்தர உறுத்துக்கட்டளை பரிகாரம் வாதிக்஑ு கிடைக்கத்தக்கதா?
3. வேறு என்ன பரிகாரம் வாதிக்஑ு கிடைக்கத்தக்கது?



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8. The plaintiff had examined himself as P.W1 and one Govindan as P.W2. On the side of the defendants, the first defendant had examined himself as D.W1 and one Ponnusamy, Chinnapaiyan and Samikannu as D.Ws.2 to 4 respectively. The plaintiff had marked as Exs.A1 to 12 and defendants had marked B1 to B6.

9. The learned Judge, on considering the evidence, both oral as well as documentary and on sifting through the evidence had come to the conclusion that a perusal of Exs.A1 to A10 would clearly demonstrate that the plaintiff is the absolute owner of the properties and that they are not the joint family properties and the defendants have miserably failed to prove the same. The learned Judge had taken note of the revenue records which clearly showed that the plaintiff is in possession of the property. Ultimately, the suit was decreed as prayed for. Challenging the said judgment and decree, the defendants have filed A.S.No.9 of 2016 on the file of the



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Principal Subordinate Court, Krishnagiri. The learned Principal Subordinate Judge also confirmed the judgment and decree of the trial Court and dismissed the appeal. Challenging the same, the defendants are before this Court.

10. Heard the learned counsel for the appellant and perused the materials available on record.

11. The defendants, while admitting the oral partition in the year 1981, would contend that despite the partition, the first defendant and the plaintiff continued to be joint. Therefore, it is for the first defendant to prove that he and the plaintiff continued to be joint and that out of the income of the joint family property, the other properties were purchased, which are the subject matter of Exs.A1 to A10. Further, the Courts below have observed the fact that under Ex.A10-Sale Deed, in and by which the plaintiff has sold 7 ½ cents to a third party, the property sold has been described within four boundaries. It has been described as east of the first



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defendant's property, which would clearly prove that in the year 1981, the parties had equally divided the properties in favour of the plaintiff as well as the first defendant and the first defendant's contention that they continued to be joint is totally wrong. The Courts below have rightly chosen to ignore Exs.B2 and B3-patta since the documents appear to have been created by the defendants by taking advantage of the fact that he was an official in the Revenue Department. The Court has also observed that the first defendant has not proved his right to the properties covered under Exs.A1 to A10-Sale Deeds. The defendants have not been able to convince this Court otherwise and they have not made out a substantial question of law. Therefore, the judgment and decree of the Courts below are confirmed. Accordingly, the second appeal is dismissed. No costs.

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Index :Yes/No  
Internet:Yes/No  
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To

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1. The Principal Subordinate Judge, Krishnagiri,
2. The District Munsif Court, Krishnagiri.
3. The Section Officer, V.R.Section, Section, High Court.



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**P.T.ASHA.J**

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