



S.A.Nos.81 & 82 of 2000

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.04.2023

CORAM

THE HONOURABLE MR.JUSTICE **P.VELMURUGAN**

S.A.Nos.81 and 82 of 2000

S.A.No.81 of 2000

1.K.Palaniandi
2.K.Chinnaian
3.K.Periasamy
4.Nachammal
5.Lingammal

...Defendants 1 to 5 / Appls. /
Appls.

-Vs-

1.Karanthan Ambalam
2.Lingan(Died)
3.Mezhukkan Ambalam
4.Chinnaian
5.Thottah
6.Nonjan
7.Minor Palaniswami
8.Poppan Ambalam
9.Karanthan
10.Kulandaivel
11.Mazhakkan
12.Chinnaian Ambalam
13.Palaniappan



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- 14.Kodangi Ambalam
- 15.Paraman
- 16.Thonthi alias Ponnambalam
- 17.Lingam
- 18.Mazhukkan
- 19.Karanthan
- 20.Sundararajan
- 21.Paraman
- 22.Karanthan
- 23.Mazhukkan
- 24.Thanjammal
- 25.Raja alias Murugan
- 26.Nachammal
- 27.Anandan
- 28.Minor Agathian
- 29.Alagammal
- 30.Pariakkal
- 31.Palaniammal alias Valliammal
- 32.Lingammal
- 33.Alagammal
- 34.Chinnammal
- 35.Chinnammal
- 36.Palanisami
- 37.Palanisami alis Kulandaivel
Minor 8th respondent represented by 6th respondent
Minor 28th respondent rep by father 27th respondent
- 38.Gopal
- 39.Soundarapandi
(R38 & R39 are brought on record as LRS of the deceased R2 vide Court order dated 18.04.2022)
(Memo presented before the Court on 31.03.2022 is



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recorded as respondents 3 to 33 are given up vide
Court order dated 31.03.2022)

PRAYER in S.A.No.81 of 2000: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 17.09.1998 passed in A.S.No.67 of 1991 by the Principal District Judge, Dindigul, confirming the judgment and decree dated 13.08.1990 passed in O.S.No.900 of 1984 by the Additional District Munsif, Dindigul.

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- 1.Palaniandi
- 2.K.Chinniah
- 3.K.Periaswami
- 4.Nachammal
- 5.Lingammal

...Plaintiffs/Appls./
Appls.

-Vs-

- 1.Lingan(Died)
- 2.Karanthan(Died)
- 3.Mazhakkan Ambalam
- 4.Thangammal
- 5.Raja alias Murugan
- 6.Nachammal
- 7.Anandan
- 8.Minor Agastian
- 9.Alagammal
- 10.Periakkal
- 11.Chinnaponnu
- 12.Vellaimmal alias Palaniammal



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13.Lingammal
14.Angammal
15.Chinnammal
16.Chinnammal
17.Palaniammal
18.Kulandaivel alias Palaniswami
(Minor 9th respondent rep. by his mother
Pasupathy Ammal)

...Defts./Respds./
Respondents

19.Gopal
20.Soundarapandi
*(R19 & R20 are brought on record as LRS of
the deceased R1 vide Court order dated 18.04.2022)
(Memo presented before the Court on 18.04.2022
is recorded as respondents 3 to 14 are given up vide
Court order dated 18.04.2022)
(Memo presented before the Court on 18.04.2022 is
recorded as R2 died and respondents 15 to 18 who
are already on record as recorded as LRS of the deceased
R2 vide Court order dated 18.04.2022)*

PRAYER in S.A.No.82 of 2000: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 17.09.1998 passed in A.S.No.145 of 1990 by the Principal District Judge, Dindigul, confirming the judgment and decree dated 13.08.1990 passed in O.S.No.612 of 1984 by the Additional District Munsif, Dindigul.

For Appellants : Mr.G.Gomathi Shankar
in both cases for M/s.M.V.Krishnan

For Respondents : No appearance
in both cases



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COMMON JUDGMENT

In S.A.No.82 of 2000, the appellants are the plaintiffs, who have filed the suit in O.S.No.612 of 1984, before the Additional District Munsif, Dindigul, against the respondents/defendants for permanent injunction.

2.In S.A.No.81 of 2000, the respondents are the plaintiffs, who have filed a suit in O.S.No.900 of 1984 against the appellants/defendants herein and others, for declaration in 'B' schedule property in the suit and for alternative relief of partition of 1/7th share except 4th item of 'A' schedule property.

3.The trial Judge, after trial, decreed the suit only in respect of the relief of partition and other prayer sought for in the suit was dismissed. Challenging the judgment and decree passed by the trial Court, the defendants filed an appeal in A.S.No.67 of 1991 before the Principal District Judge, Dindigul. The said appeal was dismissed. Aggrieved over the same, the defendants have filed the present second appeal.



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4.The specific case of the plaintiffs in O.S.No.612 of 1984 is that the suit properties and other properties annexed to that are the poramboke lands which was enjoyed by one Karanthan Ambalam. Subsequently, 'B' memo was issued to Karanthan Ambalam, who is the father of the plaintiffs 1 to 5 and husband of the 6th respondent. The said Karanthan Ambalam died leaving behind the plaintiffs as legal heirs. Thereafter, the appellants were enjoying the properties as absolute owners and the suit properties were subdivided into No.264/A3F and patta was given in the name of the said Karanthan Ambalam. Whiles, after the death of the Karanthan Ambalam, they enjoyed the suit properties during that time, the respondents tried to interfere with the suit properties, hence, a notice was sent to the respondents. Since the respondents did not stop their attitude, the appellants filed the suit in O.S.No.612 of 1984 against the respondents and others for permanent injunction.

5.The case of the respondents /defendants herein is that the suit property not belonged to the appellants/plaintiffs. The Western side of the



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suit property belonged to the respondents/defendants and the Eastern side of the property belonged to the appellants/plaintiffs and they were enjoying the same. The father of the respondents 1, 2, 3 viz., Kulandaivelu Ambalam and the father of the appellants 1 to 5 Karanthan Ambalam and Pennan Ambalam, Thothan alias Karanthan Ambalam, Poppan Ambalam, Chinnaian Ambalam, Thothi alias Pennan Ambalam are the brothers. All the 7 brothers were having patta lands in Puthupatti Village. The suit properties are adjacent to the above said patta lands. Since the suit properties are adjacent to the ancestral properties of 7 brothers, they are enjoying the suit properties. Since the father of the appellants is having better knowledge than the other brothers, he was authorised to pay the kist for the patta lands as well as the suit properties. Further, it is stated that 30 years ago, an oral partition had taken place among 7 brothers, wherein, the western side of the suit properties of 38 cents in S.No.263/3 and 12 cents in S.No.238/2, were allotted to the father of the respondents viz., Kulandivelu Ambalam. The joint family property situated at Sothampatti Village and used as a common property. The suit properties were allotted to the respondents which was



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only cultivable land and the remaining lands are not cultivable and as per partition, they are enjoying the same separately. The eastern side of the property was allotted to Karanthan Ambalam. Since the suit property is a poramboke land, the father of the appellants was given an authorisation to pay the revenue tax and to look after the property. Therefore, the property situated in Sothampatti Village and tamarind trees in that land were look after by the respondents. Since the appellants' father on promise to get a patta in favour of the respondents 1 to 3, but he obtained patta only in his name. The western side of the suit property was in possession and enjoyment of the respondents. Therefore, the appellants are not entitled to get injunction against the respondents in respect of entire suit properties. Therefore, the suit is liable to be dismissed.

6.Further, the respondents/plaintiffs filed a suit in O.S.No.900 of 1984 against the appellants/defendants for declaration and alternative relief of partition in respect of 1/7th share. In this case, the father of the respondents and the six other persons are the brothers and they are the sons



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of one Palaniandi Ambalam. The appellants 1 to 3 are the sons of Karanthan Ambalam. The appellants 4 and 5 are the daughters of Karanthan Ambalam. Item Nos.1 to 3, 5 & 6 in 'A' schedule property originally belonged to the grandfather of the respondents/plaintiffs viz., Palaniandi Ambalam. The said Palaniandi Ambalam died 30 years before. The fourth item of 'A' schedule property is a poramboke land, which is adjacent to the first item of the suit property. All the brothers had enjoyed the above said poramboke land along with their patta lands. When the grandfather was alive 35 years before, 'A' schedule property was divided by partition. In the partition, 'B' schedule was allotted to the father of the respondents/plaintiffs Kulanthaivel Ambalam and after his life time, the respondents/plaintiffs were enjoying the same. The sixth item of 'A' schedule property is an uncultivable land. Therefore, it was kept as a 'Tharisu land'. The fourth item of the property was a poramboke land, which is adjacent to their ancestral property, that was enjoyed by the brothers along with their patta lands. The poramboke land was given to Karanthan Ambalam. At the time of partition, it was decided that the expenses for obtaining 'B' memo was spent by all the



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seven brothers equally. After the death of the father of the respondents/plaintiffs, the said Karanthan Ambalam took the in-charge for paying the taxes. The half of the said poramboke land was enjoyed by the respondents/plaintiffs by paying kist through Karanthan Ambalam. In the meanwhile, the appellants/defendants 1 to 5, taking advantage of the patta stands in the name of Karanthan Ambalam, claiming exclusive right over the property and tried to interfere with the same. Except the poramboke land, they were not given any cultivable land in the partition. Therefore, the respondents/plaintiffs have filed the suit for declaration in respect of 'B' schedule property or otherwise, partition for fourth item of the poramboke land.

7.The case of the appellants/defendants is that except the fourth item of 'A' schedule property, other properties were enjoyed by the father of the respondents/plaintiffs and their brothers, after the life time of the respondents/plaintiffs' grandfather. The father of the appellants/defendants had enjoyed the fourth item of the poramboke land for more than 20 years,



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for which, 'B' memo was issued to his name. The said property was separately enjoyed by the said Karanthan Ambalam. After his life time, the appellants herein/defendants 1 to 5 were enjoying the properties by partition and also the fourth item of poramboke land. Therefore, the said poramboke land is a separate property of the said Karanthan Ambalam. Except the appellants herein/defendants 1 to 5, no other persons have any right in the properties. Since the appellants asked to sell the properties, the respondents/plaintiffs refused to do so. Therefore, they filed the suit for declaration and alternative relief of partition. The appellants/defendants already filed a separate suit in O.S.No.612 of 84 for permanent injunction.

8.Today the case is coming under the caption for 'Notice of motion'. Since the substantial question of law has not been framed and not admitted, the appeal has been filed by raising the following substantial questions of law:

“1.Whether the suit property assigned to Karanthan Ambalam long after partition in the family was



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the separate property of Karanthan Ambalam – defendants' father?

2.Whether the assignment to defendants' father Karanthan Ambalam on the basis of possession and enjoyment by payment of 'B' memo paid by him did not ensure to the benefit of the divided members of the family?

3.Whether on the basis of the assignment order dated 02.08.1980 under Ex.B.20 and the clinching documentary evidence Ex.B.1 to Ex.B.19 and Ex.B.21 to Ex.B.34, the Courts below ought to have held that the defendants alone had title and possession to the suit property?"

9.The substantial questions of law raised by the appellants do not based on the materials and also both the Courts below have rightly appreciated the oral and documentary evidence and gave proper findings. Though both the parties admitted that the fourth item of 'A' schedule property is a poramboke land and after partition of the family property among seven brothers, the fourth item was assigned to Karanthan Ambalam.



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Except the one document that the patta stands in the name of Karanthan Ambalam and no other documents to prove the same. Since it is a poramboke land and the father of the respondents was enjoying the property for more than 20 years, 'B' memo was issued. The respondents have clearly stated that since the appellants' father Karanthan Ambalam had been given the authority to pay the tax and look after the property and all the expenses spent for getting 'B' memo were paid by all the brothers equally. Both the parties admitted that 30 years before, oral partition had taken place among 7 brothers, but the suit property is a poramboke land and they cannot claim exclusive right. Therefore, once they enjoyed poramboke land only under 'B' memo, they cannot claim any exclusive right and also their western side of the suit property under the enjoyment of one of the brothers and the eastern side of the property was enjoyed by another brother. Therefore, the lower Appellate Court dismissed the appeals, since the appellants/plaintiffs have not proved the exclusive right and enjoyment of the property.



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10.As far as the suit in O.S.No.612 of 1984 is concerned, the respondents/plaintiffs have proved that the suit property was not covered under the partition. Since the respondents' father was not given any other cultivable land, except the poramboke land, which is only cultivable land. Therefore, claiming their exclusive possession and declaration, in case, it is not covered under partition or no exclusive right was given to the respondent, they have to partition the said property. The suit in O.S.No.612 of 1984 filed by the appellants/plaintiffs therein did not prove that they were in exclusive possession of the property, admittedly, it is a poramboke land and only obtained 'B' memo and further the patta is not a document of title and also they have not proved their exclusive right and possession. Therefore, they are not entitled to get injunction in respect of the entire suit properties. Hence, the appeal is liable to be dismissed.

11.As far as the suit in O.S.No.900 of 1984 is concerned, the appellants/defendants in O.S.No.900 of 1984 seeking relief of declaration or alternative relief for partition. The trial Court found that the suit property is



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admittedly a poramboke land. Though 'B' memo was issued and patta stands in the name of Karanthan Ambalam, the same was not produced. Therefore, taking advantage of common enjoyment and the authority to pay the kists he obtained patta in his name which will not bind the other coparcener. Therefore, the relief of declaration was rejected. However, partition was allowed.

12. On a careful perusal of the entire oral and documentary evidence and also the findings of the Courts below, 'B' memo was issued in the name of Karanthan Ambalam. Further, all the documents regarding the assignment and 'B' memo and payment of kists shows the same were issued in the name of the father of the appellants/defendants herein, but that itself is not sufficient to prove exclusive right. Since it is adjacent to the patta lands and they were enjoying the poramboke land and subsequently, got assignment under 'B' memo and paid kists also. Except the promboke land, their private properties were divided by meets and bounds. Since all the brother enjoyed the poramboke land jointly and 'B' memo was issued in the



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name of the one of the brothers, namely, Karanthan Ambalam and the poramboke land was in joint enjoyment of all the family members treated as joint possession. Therefore, mere 'B' memo stands in the name of the father of the appellants and subsequently, paid kist which would not go to show that he is the absolute owner of the property. If the possession of the holder of a property was on behalf of other coparceners, the land will be deemed to be with the possession of all coparceners. Therefore, the respondents/plaintiffs in O.S.No.900 of 1984 is entitled for partition by 1/7th share and there is no merit in the other relief.

13.In the result, these Second Appeals are dismissed and no substantial question of law arose for consideration in the second appeals.
No costs.

27.04.2023

NCC:Yes/No

Index:Yes/No

Internet:Yes/No

Ns/skn



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To

- 1.The Additional District Munsif,
Dindigul.
- 2.The Principal District Judge,
Dindigul.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VELMURUGAN,J.

Ns/skn

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