



S.A.Nos.628 and 638 of 2009

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

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**Received on :18.12.2023**

**Pronounced on : .02.2024**

**CORAM :**

**THE HONOURABLE Mr. JUSTICE C.KUMARAPPAN**

**S.A.Nos.628 and 638 of 2009**

**S.A.No.628 of 2009**

1.Minor Saravanan  
2.Kanagaraj  
3.Selvagandhi

...Defendants 1to3/  
Respondents 1 to 3/Appellants

Vs.

1.Minor Dheenadhayalan  
2.Anbalagan  
3.Malarammal  
4.Venkatesan  
5.Chinnakannu Udayar

...Plaintiffs/Appellants/  
Respondents 1 to 3

...Defendants 4&5/  
Respondents 4 & 5/Respondents 4&5

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 24.04.2009 made in A.S.No.76 of 2007 on the file of the Principal Sub-Court, Villupuram, reversing the judgment and decree, dated 17.09.2005 made in O.S.No.269 of 2004 on the file of the II Additional District Munsif Court, Ulundurpet.



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**S.A.No.638 of 2009**

1.Minor Saravanan  
2.Selvagandhi

...Plaintiffs/  
Respondents 1 & 2/Appellants

Vs.

1.Minor Dheenadhayalan  
2.Malarammal  
3.Anbalagan

...Defendants 1to3/  
Appellants/Respondents 1 to 3

4.Venkatesan

...Defendant 4/  
Respondent 3/Respondent 4

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 24.04.2009 made in A.S.No.75 of 2007 on the file of the Principal Sub-Court, Villupuram, reversing the judgment and decree, dated 17.09.2005 made in O.S.No.283 of 2004 on the file of the II Additional District Munsif Court, Ulundurpet.

For Appellants : M/s.S.Mukunth  
for M/s.S.Annamalai

For R1 to R3 : M/s.N.Suresh  
For R4 :M/s.V.Perumal(No appearance)  
For R5 :No appearance

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### **COMMON JUDGMENT**

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These two second appeals are arising out of two suits in O.S.Nos.269 and 283 of 2004. The trial Court by way of a common judgment, dated 17.09.2005 decreed the suit in O.S.No.283 of 2004 and dismissed the other suit in O.S.No.269 of 2004. Both the suits are pertains to the same suit property. However, the first appellate Court by two different judgments, but delivered on the same date allowed both the appeals by reversing the decree and judgment of the trial Court dated 17.09.2005. Since both the appeals related to the same property and disposed by the trial Court by common judgment, this Court deems it appropriate to dispose the same by way of a common judgment.

2.For the sake of convenience, this Court deems it appropriate to refer the parties as referred to in O.S.No.283 of 2004.

The brief facts which give rise to the instant Second Appeal are as follows:

3. The suit property was originally belonged to one Ariputhira Udaiyar. He has got three sons, by name, Chinnakannu Udaiyar, Srinivasa



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Udaiyar and Ponnusamy Udaiyar. After the demise of the said Ariputhira Udaiyar, his sons have orally partitioned the property between themselves. In such partition, the suit 'A' schedule property devolved upon Chinnakannu Udaiyar, who is the fifth defendant in O.S.No.283 of 2004. According to the plaintiff, 'A' schedule property is the ancestral property of Chinnakannu Udaiyar. Therefore, the son of Chinnakannu Udaiyar viz., Mr.Venkatesan, who is the fourth defendant herein, by birth entitled to have half share in the 'A' schedule property. However, denying the right of the fourth defendant, the fifth defendant Chinnakannu Udaiyar executed a sale deed in respect of the entire extent of 'A' schedule property to the first defendant on 29.04.2002. According to the plaintiff, such sale deed is void. Through such sale deed, the first defendant cannot have any better title than what Chinnakannu Udaiyar had in the suit property.

4.While so, Chinnakannu Udaiyar's son Venkatesan, who is the fourth defendant has executed a sale deed in favour of the first plaintiff in respect of the half share of 'A' schedule property, which is referred to as 'B' schedule in the suit, by virtue of sale deed, dated 12.06.2003. Therefore, the first plaintiff



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submits that the sale deed executed by Chinnakannu Udaiyar in favour of the first defendant will not bind upon him. Hence, the first plaintiff prays for declaration to declare the sale deed as void and further, he has also come forward with the suit for declaration in respect of 'B' schedule property which is undivided half share of 'A' schedule property.

5. The said suit was resisted by the defendants 1 to 3 by contending that the said Chinnakannu Udaiyar had an absolute right over 'A' schedule property and that even his brother viz., Srinivasa Udaiyar and Ponnusamy Udaiyar sold their property immediately after their oral partition. They further stated that the said Chinnakannu Udaiyar has sold the property to the first defendant on 29.04.2002, prior to the sale deed executed by Venkatesan (4<sup>th</sup> defendant) in favour of the first plaintiff. Therefore, through the sale deed executed by the said Venkatesan, the first plaintiff cannot derive any title. Hence, the defendants 1 to 3 pray to dismiss the suit.

6. The fourth and fifth defendants, who are the father and son of the alleged predecessor in title states that the suit property is the ancestral property,



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and that by birth, the fourth defendant has got half share. Therefore, they contended that though the fifth defendant sold the entire property to the first defendant, such sale can bind only to an extent of half share of the undivided property. Hence, the fourth and fifth defendants supported to the case of the plaintiff.

7. The other suit in O.S.No.269 of 2004 was filed by the defendants 1 to 3 in O.S.No.283 of 2004. In the said suit, the defendants 1 to 3 (minor Dheenadhayalan, Anbalagan, Malarammal) have sought for the relief of declaration in respect of 'B' schedule of the said suit ('A' schedule in O.S.No.269 of 2004). The pleading in the suit in O.S.No.269 of 2004 is nothing but the written statement filed in O.S.No.283 of 2004. Similarly, in the said suit, the plaintiffs in O.S.No.283 of 2004 were arrayed as the defendants 1 and 3. Their written statement in the suit in O.S.No.269 of 2004 is nothing but the plaint pleadings in O.S.No.283 of 2004. Similarly, the defendants 4 and 5 have also filed a written statement as similar with the stand taken in O.S.No.283 of 2004. In the said written statement, they have categorically stated that the suit property originally belonged to one Ariyaputhira Udaiyar.



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8. Before the trial Court, joint trial was conducted and the documents were ordered to be marked in O.S.No.283 of 2004. On the side of the plaintiffs, three witnesses were examined as P.W.1 to P.W.3 and two documents were marked as Ex.A.1 and Ex.A.2. On the side of the defendants, five witnesses were examined as D.W.1 to D.W.5 and eight documents were marked as Ex.B.1 to Ex.B8.

**Finding of both the Courts below:**

9. The trial Court, after having considered the oral and documentary evidence, has arrived at a conclusion that the suit property is the ancestral property of Venkatesan and therefore, by birth, the said Venkatesan has got right and hence, decreed the suit filed by the minor Dheenadhayalan in O.S.No.283 of 2004 and declared that the sale deed executed by Venkatesan, is void. The trial Court has also found that the plaintiff in O.S.No.269 of 2004 is not entitled for decree as prayed for in their suit. Aggrieved over the same, the defendants 1 to 3 preferred an appeal before the first appellate Court. The first appellate Court reversed the finding and decreed the suit filed by the minor Dheenadhayalan and others viz., O.S.No.269 of 2004, and dismissed the suit in



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O.S.No.283 of 2004.

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**Substantial Question of Law:**

10. At the time of admission, this Court has formulated the substantial questions of law as follows:

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*“Even though the lower appellate Court has observed that the character of the suit property is ancestral in nature in the hands of the fifth defendant whether it is correct in dismissing the suit?”*

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*“Whether the alienation made by the fifth defendant are binding upon the fourth defendant in view of the admissions of the parties as to joint family property?”*

**Submissions on either side:**

11. The learned counsel appearing on behalf of the appellants would contend that the suit 'A' schedule property is the ancestral property. Therefore, by birth, the son of Chinnakannu Udaiyar viz., Venkatesan has got half share. Hence, the sale deed executed by the said Venkatesan in favour of the first plaintiff is valid and binding up on the parties. The learned counsel would



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further contend that even the executor of both the sale deeds, *qua* Chinnakannu Udaiyar and Venkatesan, have admitted the nature and character of the property as it is an ancestral property. Therefore, the execution of the sale deed by the said Chinnakannu Udaiyar in respect of the entire property will not bind upon the said Venkatesan and therefore, the sale deed executed by Venkatesan in favour of the first plaintiff will confer right upon him. Hence, the order passed by the first appellate Court is on the basis of misreading of evidence. Hence, he prays to interfere with the same.

12. In support of his contentions, the learned Senior Counsel relied upon the following judgments:

(I). In ***Jai Singh and Others-Vs-Gurmej Singh***, reported in (2009) 15 Supreme Court Cases 747.

(II) In ***Ramdas-Vs-Sitabai and Others***, reported in (2009) 7 Supreme Court Cases 444.

(III) In ***Sunil Kumar and Another-Vs-Ram Parkash and Others***, reported in (1998) 2 Supreme Court Cases 77.



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13.Per contra, the learned counsel for the respondents would contend that the finding of fact recorded by the first appellate Court that the sale deed executed by Chinnakannu Udaiyar in favour of the first defendant is prior in point of time. Therefore, the entire property of their family has been sold to the first defendant and that there is no right vested with Mr.Venkatesan so as to execute the sale deed in favour of the first plaintiff. It was also further contended by the learned counsel for the respondents that the property devolved upon Chinnakannu Udaiyar became his absolute property. Hence, he prays to confirm the order of the first appellate Court.

14.In support of his contentions, the learned counsel relied upon the following judgments:

(I) In ***Radha Bai-Vs-Ram Narayan and Others***, reported in (2020) ***19 Supreme Court Cases 513***.

(II)In ***Mariammal & anothere-Vs-Subbuthai & Others***, reported in ***2013(5) CTC 49***.

(III)In ***M.Kumaran and others-Vs-J.Rajesh(Minor) and another***, reported in ***2010-5-L.W.329***.



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15.I have given my anxious consideration to the submissions made by either side.

16. The short point to be considered in these second appeals is the character and nature of the suit property. If the suit property is ancestral in nature, then the suit in O.S.No.283 of 2004 is liable to be decreed and the suit filed in respect of the entire extent of the property viz., O.S.No.269 of 2004 is liable to be dismissed. On the other hand, if the suit property confers any absolute right to Chinnakannu Udaiyar, then, the sale deed executed by Chinnakannu Udayar under Ex.B.3 will bind upon the parties and the said Venkatesan has no right or title over the suit property to execute the sale deed-Ex.B.4 in favour of the first plaintiff.

17.The learned Senior Counsel for the appellants would urge this Court to rely upon the stand taken by the fourth and fifth defendants, wherein they have contended that the suit property is the ancestral property. At this juncture, the learned counsel for the respondents invited the attention of this Court about the written statement filed by Chinnakannu Udaiyar and Venkatesan Udaiyar in O.S.No.289 of 2004 wherein they have pleaded as follows:



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“தாவா பி அயிட்ட சொத்தும் 4ம் பிரதிவாதியின் தகப்பனாரான

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அரிபுத்திர உடையாருக்கு பாத்தியமான சொத்து மேற்படி சொத்துக்களை 4ம் பிரதிவாதியிடம் 4ம் பிரதிவாதியின் சகோதரர் சீனுவாச உடையார் பாகம்பிரித்துக்கொண்டதில் மேற்படி சொத்து 4ம் பிரதிவாதிக்கு கிடைத்து 4ம் பிரதிவாதியின் குமாரர் 5ம் பிரதிவாதி ஆவார், 4ம் பிரதிவாதியும் 5ம் பிரதிவாதியும் வாய்மொழியாக பாகம் பிரித்துக் கொண்டதில் 5ம் பிரதிவாதிக்கு தாவா பி அயிட்ட சொத்தில் 0.48 செண்ட் கிடைத்தது.

18.The fifth defendant, Venkatesan in O.S.No.269 of 2004 has pleaded in his written statement as follows:

“தாவா பி அயிட்ட சொத்து 4ம் பிரதிவாதியின் தகப்பனாரான

அரிபுத்திர உடையாருக்கு பாத்தியமான சொத்து.”

Therefore, though casually the suit property mentioned as ancestral property, both the executor namely Chinnakannu Udaiyar and Venkatesa Udaiyar have categorically admitted that the suit property was absolutely belonged to one Ariyaputhira Udaiyar. Therefore, since because, there is reference of ancestry in their pleading as derived from his father Ariyaputhira Udayar, that does not mean that the suit property became coparcener property to apply Section 6 of the Hindu Succession Act, 1956.



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19.From the pleadings of both the defendants, it is categorically admitted that the suit property was absolutely belonged to one Ariyaputhira Udaiyar. Therefore, proper application of Section would only to Section 8 of the Hindu Succession Act. If Section 8 of the Hindu Succession Act, is applied when the said Chinnakannu Udaiyar was alive, his son Venkatesan has absolutely no right over the suit property. In this regard, it is useful to refer the opt quoted Full Bench judgment of the Madras High Court in ***AIR 1979 Mad 1*** in ***The Additional Commissioner of Income-tax, Madras-1-Vs-P.L.Karuppan Chettiar, Karur***. The relevant portion of the judgment is extracted hereunder:

*“6. The question is whether when succession opens under Section 8, Karuppan and his son will take the property in the same manner. Clearly, this is not so. When we search for the relatives mentioned in class I of the schedule, which is attracted by virtue of Section 8, we find no sons are mentioned at all. though the grandson of a deceased son is mentioned. What would be the effect when such a grandson comes into the picture need not be dealt with in this case. But where the son as well as his son are the persons concerned, by applying Section 8, we have to come to the conclusion that the father along, namely Karuppan in this case would inherit the property to the exclusion of the grandson. This being the effect of the statutory provision, no interest would accrue to the grandson in the property*



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*which belonged to Palaniappa. Even assuming Palaniappa's property was ancestral property in the hands of Karuppan, still because of the effect of the statute, Karuppan's son would not have an interest in the property. This was directly derogatory of the law established according to the principles of the Hindu Law and this provision in the statute must prevail in view of unequivocal expression of the intention in the statute itself which said that to the extent to which provisions had been made in the statute, those provisions should override the established provisions in the texts of Hindu Law. This is what M. H. Beg J. as he then was, said in the decision in [Commr. of Income-tax v. Ram Rakshpal](#), (1968) 67 ITR 164(All). Commenting of this, Divan C. J. in [Commr. of Income-tax v. Babubhai Mansukhbahi](#) (1977) 108 ITR 417 at p. 420 (Guj) made the following observations :*

*"The Division Bench there held that in view of the provisions of [Section 6](#) and [Section 8](#) of the Hindu Succession Act, the old position no longer prevailed and the income from assets inherited by a son from his father must be held to be his individual and not the income of the Hindu undivided family consisting of himself and his son. Main reliance in support of this conclusion was placed by the Allahabad High Court on the provisions of [Sections 6](#) and [8](#) of the Hindu Succession Act. The Allahabad High Court accepted the principle that if it had not been for the [Hindu Succession Act](#), on the death of a father whatever was inherited by his son by way of succession became ancestral property in the son's hands and this ancestral property in*



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*the hands of the son belonged to the coparcenary or the joint Hindu family consisting of the son and his own male issue.....”*

20.The said judgment has been relied by the Hon'ble Supreme Court in ***Uttam-Vs-Saubhag Singh and Others***, reported in ***(2016) 4 SCC 68***. Therefore, this Court is of the firm view that no right will vest upon Mr.Venkatesan as long as Chinnakannu Udaiyar is alive. Here, in our case, Chinnakannu Udaiyar himself has sold the entire extent of property to the first defendant. Therefore, by virtue of the sale deed executed by the said Venkatesan, the first plaintiff, cannot have derive any right through the same. Though the above discussion is sufficient to dispose of these second appeals, since the learned Senior Counsel has relied on some Hon'ble Supreme Court judgments cited supra, this Court deems it appropriate to answer those judgments as they are not applicable to the instant case.

21.The learned Senior Counsel relied on the judgment in ***Jai Singh and Others case (cited supra)*** to emphasis his point, even though Chinnakannu Udaiyar has sold the entire extent, the said deed can be given effect to the extent of his half share. But the above ruling is not applicable to the present case, as this Court has held that Chinnakannu Udaiyar becomes the absolute



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owner of the property by virtue of Section 8 of the Hindu Succession Act.

Further, the ruling reported in *Sunil Kumar and Another case*, is also not relevant to the facts of this case.

22.The judgment of *Radha Bai-Vs-Ram Narayan and Others*, reported in (2020) 19 Supreme Court Cases 513, relied by the learned counsel for the respondents would support their case to arrive at a decision that the said Chinnakannu Udaiyar succeed the property under Section 8 of the Hindu Succession Act.

23.Therefore, this Court holds that after the demise of Ariyaputhira Udaiyar, the suit property became the absolute property of Chinnakannu Udaiyar by virtue of Section 8 of the Hindu Succession Act. Therefore, the sale deed executed by one Chinnakannu Udaiyar in favour of the first defendant will bind upon the party. If that being the case, the said Venkatesan has no right to sell the same. Hence, the plaintiffs cannot derive title over 'B' schedule property. Therefore, the substantial questions of law are answered in favour of the respondents.



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24.In the result, both the Second Appeals stand dismissed. No costs.

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NCC:Yes/No  
Index:Yes/No  
Internet:Yes/No  
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To

- 1.The Principal Sub-Court,  
Villupuram.
- 2.The II Additional District Munsif Court,  
Ulundurpet.
- 3.The Section Officer,  
Vernacular Records,  
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**C.KUMARAPPAN.,J  
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