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S.A.No.243 of 2009



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2025

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

S.A.No.243 of 2009 and
M.P.No.1 of 2009 and
M.P.No.1 of 2013

1.C.Rajakumaran (deceased) ... First Appellant / Plaintiff
2.R.Rani
3.R.Murugaraj
4.R.Veeramani
5.Kalayani

(LRs of the deceased appellant are brought on record vide
order dated 27.06.2025 in CMP.Nos.13347, 13353 &13355 of 2021)

... LRs of the first Appellant

Vs.

Arumugam ... Respondent / defendant

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 15.11.2008 made in A.S.No.24 of 2008 on the file of the First Additional Subordinate Judge, Cuddalore, reversing the well considered judgment and decree dated 29.02.2008 made in O.S.No.580 of 2005 on the file of the District Munsif Court, Cuddalore.



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S.A.No.243 of 20



For Appellants : Ms.G.Sumitra

For Respondent : Mr.K.Mohammed Hyether Ali for
Mr.D.Ravichander

JUDGMENT

This Second Appeal has been filed to set aside the judgment and decree dated 15.11.2008 made in A.S.No.24 of 2008 on the file of the First Additional Subordinate Judge, Cuddalore, reversing the judgment and decree dated 29.02.2008 made in O.S.No.580 of 2005 on the file of the District Munsif Court, Cuddalore.

2. Heard Ms.G.Sumitra, learned counsel for the appellants and Mr.K.Mohammed Hyether Ali, learned counsel for the respondent and perused the materials available on record.

3. The plaintiff in O.S.No.580 of 2005 on the file of the District Munsif Court at Cuddalore was the deceased first appellant. The suit in O.S.No.580 of 2005 had been filed seeking a judgment and decree to declare the title of the suit property and for permanent injunction restraining the defendant from interfering with the peaceful possession of the plaintiff. The property had been described in the schedule as vacant land measuring 9



1/2 cents with a house at Annavalli Village in Cuddalore District. The boundaries have been given in the schedule to the plaint.

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4. It is the case of the plaintiff that the property was classified as natham poramboke in the revenue records. The father of the plaintiff Chinnarasu and his brothers Arumugham, the defendant herein and yet another brother Subramanian were residing in a tiled house. The total area was around 15 cents. It had been contended that Subramanian had sold his 5 cents of land to Arumugham which crystallized the possession of Arumugham to 10 cents, but the plaintiff retained 5 cents. It had been contended that the defendant had been trying to interfere with the peaceful possession of the plaintiff and questioning the right and title of the plaintiff. Therefore, a suit had been filed seeking declaration of title and for protecting the possession.

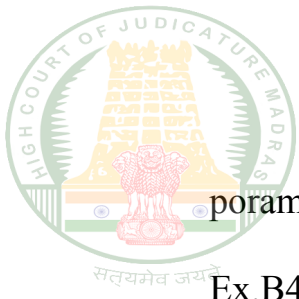
5. A written statement had been filed by the defendant denying and disputing the contentions of the plaintiff. It had been contended that the plaintiff had obtained patta clandestinely for a larger extent and there was an oral partition of the total area of 15 cents. 5 cents in the southern most



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area was allotted to the plaintiff's father Chinnarasu and the centre portion of 5 cents was allotted to the defendant and the northern portion of 5 cents had been allotted to Subramanian. It had been contended that the defendant had purchased the northern portion of 5 cents from Subramanian and consolidated his possession to a total area of 10 cents. But the father of the plaintiff was entitled to only 5 cents of land. This purchase was through a registered sale deed dated 03.02.2003 for a valuable consideration of Rs.50,000/-. The defendant therefore claimed that he was entitled to the possession of 10 cents and also asserted title to the said area of 10 cents.

6. The learned Trial Judge, on the basis of the pleadings and on appreciation of evidence, had decreed the suit and had granted title to the plaintiff for an area of 5 cents of the suit property and to the defendant to an area of 10 cents. This has necessitated A.S.No.24 of 2008 to be filed before the First Additional Sub-Court, Cuddalore by the defendant Arumugham. The learned First Additional Sub Judge while re-appreciating the evidence, had first examined the classification of land which according to the plaintiff was a natham poramboke and however, relied on the evidence which pointed out that the land was a sarkar poramboke and not a natham



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poramboke. The learned First Appellate Court had also placed reliance on Ex.B4 dated 03.02.2003, a registered sale deed in favour of the defendant by the other co-owner Subramani and Ex.B3 which is a mortgage deed wherein, the factum of partition had been reiterated and affirmed. It had also been pointed out by the learned First Appellate Court that there are definite boundaries to the properties. Taking all these factors into consideration, the First Appellate Court had held that the plaintiff was not entitled for declaration on the basis of patta, but asserted that there was an oral partition which had been proved. Therefore, he had set aside the judgment and decree of the Trial Court. Hence, the plaintiff has filed the present Second Appeal.

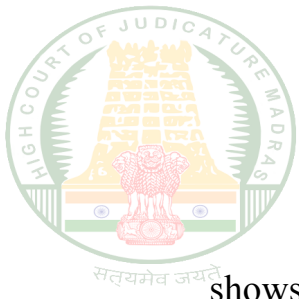
7. The Appeal has not yet been admitted. There was a discussion during the pendency of the Appeal that the total area of 15 cents can be divided into two separate parts limiting one part on the southern side of 5 cents to the plaintiff and the other part in the middle and northern side totally 10 cents to the defendant. The facts also show that both Ex. B3 and Ex.B4 have not been considered in their true perspective by the learned Trial Judge. Ex.B3 is a registered sale deed in favour of the defendant and



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Ex.B4 is the mortgage deed in which this factum of partition has been asserted and affirmed and has been reduced into writing by the parties.

8. The very fact that the respondent herein / defendant in the suit was entitled to his share of the property and that had been very clearly stated in the judgment of the First Appellate Court which followed Ex.B3 & Ex.B4. The entire issue surrounds the facts and no substantial question of law arises for consideration. In the grounds of Appeal, the learned counsel had framed one question claiming it to be a substantial question whether the Appellate Court was right in placing reliance on Ex.B3 and Ex.B4 and on the basis that Ex.B3 was a self serving document. It is not a self-serving document. It is a sale deed for adequate and valuable consideration of Rs.50,000/- for 5 cents of land by one brother to another brother. They both had an existing right. The vendor had a right for 5 cents which was in the northern side and the purchaser had a right for 5 cents in the middle of the land. Therefore, the document cannot be brushed aside as a self serving document. No question of law arises in the interpretation of that particular document. The second substantial question of law as framed had the origin of the property as joint family.



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9. The very fact that the three brothers resided in 5 cents of land each shows that there should have been a common root for the property. Each of them had not claimed that they had individually purchased 5 cents each, but that they had inherited the same. Again, there is no substantial question of law. What has been claimed is only a question of fact. The third substantial question of law, according to the learned counsel, was whether the Court was right in rejecting Ex.A1, which is a copy of the patta that describes the nature of the land as a natham poramboke and the date on which the land has been reclassified as natham poramboke. Again that is a question of fact. This Second Appeal has to suffer an order of dismissal, however, giving liberty to the parties to apply for partition and separate demarcation of their area in which they are in possession.

10. In the result, this Second Appeal is dismissed. No costs.

Consequently, connected miscellaneous petitions are closed.

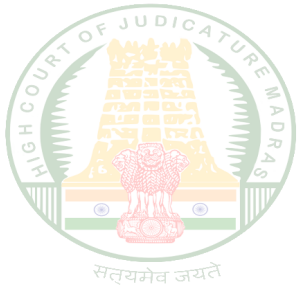
Speaking order / Non-speaking order

27.06.2025

Index : Yes / No

Neutral Citation : Yes / No

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WEB COPY

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C.V.KARTHIKEYAN, J.

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To

1. The First Additional Subordinate Judge,
Cuddalore.
2. The District Munsif Court, Cuddalore.

S.A.No.243 of 2009 and
M.P.No.1 of 2009 and
M.P.No.1 of 2013

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