



S.A.No.683 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED : 08.07.2025

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Second Appeal No.683 of 2010

Rajangam

... Appellant

Versus

1.Narayanasamy (Died)
2.Annabakkiyam
3.Pachaiammal
4.Palaniammal
5.Murugan
6.Arumugam
7.Annapoorani
8.Marimuthu
9.Dhanalakshmi

... Respondents

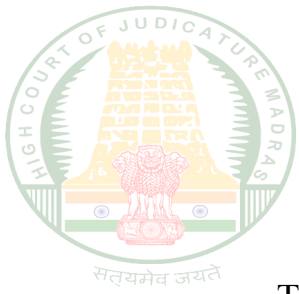
[R-1 died. R3 to R9 are brought on record as LR's of the deceased R1 vide Court order dated 28.02.2024 made in C.M.P.Nos.25967, 25969 & 25971 of 2023 in S.A.No.683 of 2010]

PRAYER Second Appeal filed under Section 100 of CPC, against the judgment and decree of the learned Principal Subordinate Judge, Villupuram, made in A.S.No.44 of 2008 dated 25.02.2010 in reversing the judgment and decree of the learned Principal District Munsif, Ulundurpet, dated 31.10.2006 made in O.S.No.309 of 2005.

For Appellant : Mr.D.Rajasekar

For Respondents : M/s.T.Dhanyakumar

J U D G M E N T



S.A.No.683 of 2010

WEB COPY

This Second Appeal is filed to set aside the judgment and decree of the learned Principal Subordinate Judge, Villupuram, made in A.S.No.44 of 2008 dated 25.02.2010 in reversing the judgment and decree of the learned Principal District Munsif, Ulundurpet, dated 31.10.2006 made in O.S.No.309 of 2005.

2. For the sake of convenience, the parties are referred to as Plaintiff and Defendants as referred in the suit.

3. The averments in the plaint filed by the Plaintiff are as follows:-

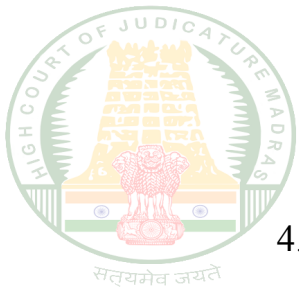
The case of the Plaintiff is that the suit property originally belonged to Narayana Padayachi. After the death of Narayana Padayachi, his four sons had partitioned the properties among themselves in the year 1965. Accordingly, each son of Narayana Padayachi had taken possession of his respective share and enjoyed by constructing houses in their share. Accordingly, the suit property had been allotted to the share of Ramakrishnan. The land on the Western side of the suit property measuring same area was allotted to Muthukrishnan. The land on the Eastern side with the same area was also allotted to Kandasami. To the Eastern side of Kandasami's land with the same area had been allotted to Rangasamy. The said Kandasami died without any issues. So the area which was allotted to Kandasami was taken by Rangasamy.



S.A.No.683 of 2010

The above said four sons enjoyed according to the allotment carved out by themselves. The above said allotment happened by way of oral partition.

Accordingly, Ramakrishnan enjoyed the separate allotted portion along with his other properties. Later on he executed a settlement deed in respect of the said properties in favour of his wife on 16.12.1967. The said Poorani Ammal executed a sale deed in favour of the Plaintiff on 21.07.1989 in respect of the settled property along with some other property. After the purchase of the suit property by the Plaintiff, he constructed a thatched house and mutations were also effected in the name of the Plaintiff and house tax was also paid in the name of the Plaintiff. The Defendants 1 and 2 are the relatives of the Plaintiff. At the request of the Defendants, Plaintiff had permitted them to reside in the suit property till the renovation of their dilapidated house. So the Plaintiff had given permissive possession to the Defendants in respect of the suit property. Thereafter, the Plaintiff demanded to get back the possession. The Defendants refused to surrender the suit property to the Plaintiff. Thereafter, the Plaintiff issued a legal notice on 29.11.2003. Plaintiff also revoked the permission given to the Defendants regarding the suit property. So, the Defendants are mere trespassers to the suit property. Because of the Defendants refusal to surrender the suit property to the Plaintiff, the Plaintiff was necessitated to file the suit for declaration of title and for possession in respect of the suit property.



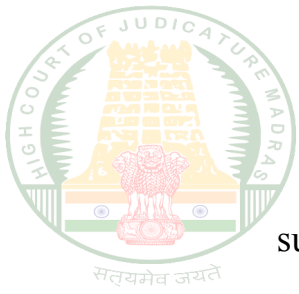
4. The brief averments made in the written statement filed by the

WEB C Defendants are as follows:-

The case of the Defendants is that the allegation contained in the plaint are entirely denied. There has been no oral partition that had taken place between the Defendants and his brothers. No settlement had been executed in favour of Poorani Ammal and thereby, she was not in enjoyment or possession of the suit property. Since the said Poorani Ammal herself does not have right over the suit property, she cannot execute the same in favour of the Plaintiff as well. The boundaries stated in the plaint schedule is entirely wrong and incorrect. The 1/4th share that has been recited in the settlement deed is enough to show that the property has not been separately partitioned. The Plaintiff has to file a partition suit. However, instead of filing such partition suit, the Plaintiff has sought for the relief of declaration of title and possession in respect of the suit property, which is not at all sustainable. All the legal heirs of the Narayana Padayachi are not impleaded in the suit. The suit is bad for non-joinder of necessary parties to the suit. The suit has been hit by the principles of non-joinder of necessary parties. So the suit is liable to be dismissed.

5. The following issues were framed for the trial of the case:

1. Whether the suit property belongs to the Plaintiff?
2. Whether the Plaintiff is entitled to the relief of declaration of title to the



S.A.No.683 of 2010

suit property?

WEB COPY 3. To what other relief the Plaintiff is entitled?

6. During trial, the Plaintiff examined himself as P.W-1. The affidavit filed by P.W-1 was treated as examination-in-chief in support of the claim of the Plaintiff. The documents were marked as Ex.A-1 to Ex.A-8, which are as follows:

- a) Ex.A-1 is the original copy of the settlement deed executed by Ramakrishnan to his wife, Pooraniammal dated 28.12.1967.
- b) Ex.A-2 is the sale deed executed by Pooraniammal in favour of the Plaintiff dated 21.07.1989.
- c) Ex.A-3 is the patta in the name of the Plaintiff dated 25.01.1996.
- d) Ex.A-4 to Ex.A-6 are the house tax receipts.
- e) Ex.A-7 is the copy of the notice issued to the Defendants on behalf of the Plaintiff.
- f) Ex.A-8 is the reply notice by the Defendants for the notice under Ex.A-

7. No other witness was examined on the side of the Plaintiff.

7. The 1st Defendant, Narayansamy examined himself as D.W-1 and the affidavit of Narayanasamy was treated as examination-in-chief of D.W.-1. One Radhakrishnan was examined as D.W-2. The affidavit of D.W-2 was



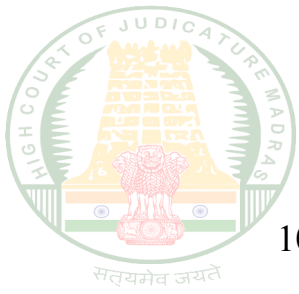
S.A.No.683 of 2010

WEB COM treated as examination-in-chief of D.W-2 and he was cross examined on behalf of the Plaintiff. No other witnesses were examined.

8. In support of his claim in the written statement, documents relied on by the Defendants were marked as Ex.B-1 to Ex.B-13, which are as follows:

- a) Ex.B-1 is the electricity board receipts.
- b) Ex.B-2 is the patta standing in the name of the 2nd Defendant, Annabakkiam.
- c) Ex.B-3 to Ex.B-11 are the series of house tax receipts.
- d) Ex.B-12 is the photostat copy of the family card.
- e) Ex.B-13 is the ration card showing the permanent address of the Defendants.

9. On assessment of evidence, the learned Principal District Munsif, Ulundurpet, by judgment dated 31.10.2006 had decreed the suit of the Plaintiff thereby granting declaration of title and recovery of possession. The Plaintiff was directed to approach the Executing Court and file appropriate petition. Aggrieved, the Defendants had preferred an appeal in A.S.No.44 of 2008 seeking to set aside the judgment of the learned Principal District Munsif, Ulundurpet, in O.S.No.309 of 2005.



S.A.No.683 of 2010

10. After hearing both parties, the learned Principal Sub Judge, Villupuram, by judgment dated 25.02.2010 in A.S.No.44 of 2008, allowed the Appeal of the Defendants and set aside the judgment of the learned Principal District Munsif, Ulundurpet, in O.S.No.309 of 2005 thereby dismissing the suit.

11. Aggrieved, the Plaintiff in O.S.No.309 of 2005 before the learned Principal District Munsif, Ulundurpet, had preferred this Second Appeal raising the following substantial questions of law:

i) Whether the Lower Appellate Court is correct in finding that Ex.A-1 has not been proved by not examining any attesting witnesses, scribe, when, A1 is not a testamentary one, and when it comes under proviso to Section 68 of Indian Evidence Act 1872?

ii) Whether the Lower Appellate Court is correct in finding that on the basis of oral evidence of D.W-1 and D.W-2, Poorani Ammal, did not enjoy nor in possession of the property, when there is recital to that effect in Ex.A-2, which excludes oral evidence of D.W-1 and D.W-2 under Section 92 of Evidence Act?

12. The learned Counsel for the Appellant submits that the First Appellate Court failed to appreciate the fact that the Defendants took a mutually destructive plea in the written statement. On the one hand, the Defendants claim was that no share was allotted to Ramakrishnan. In the same



S.A.No.683 of 2010

WEB COPY

breath, the Defendants contended that Ramakrishnan is entitled to only 1/4th share in S.No.203/1 and therefore the remedy for the Plaintiff is to file a suit for partition and not for the relief of declaration of title and possession. Admittedly, the suit property forms a part of the larger extent of 3600 sq.ft. Therefore, all the four brothers are entitled to equal share. Namely, 1/4th share which comes to 900 sq.ft., each. The Defendants did not dispute the shares namely 900 sq.ft., allotted to Kandasami on the Eastern side of the suit property and another 900 sq.ft on the further Eastern side to the Kandasami's share which was allotted to the Plaintiff's father, Rangasamy. In principle and for all practical purpose, the division of shares as stated in paragraph No.3 of the plaint was never disputed or denied by the Defendants but on the other hand, the Defendants claimed both his father's share and Kandasami's share.

13. During the cross examination, the Defendants admitted that the suit property is classified as Natham property. The Defendants have also admitted that as per the description in the suit, the share was allotted to Ramakrishnan namely his paternal uncle. The Defendants have admitted that the share that was allotted to Kandasami was not divided among three brothers as per the plaint averments. The Defendants also admitted that Rangasamy was allotted a share on the Eastern side of Muthukrishnan's share. When a specific question was put to D.W-1 about the settlement deed executed by



S.A.No.683 of 2010

Ramakrishnan in favour of Poorani Ammal, he only replied that he did not know about the same. He had also further admitted that the share that was allotted to Ramakrishnan was vacant site. More specifically, he admitted that the larger extent of suit property admeasuring 3600 sq. ft., was divided into four shares. He also admitted about the suit proceedings initiated by Pachaiammal, W/o. Kandasami against other brothers which was later entered into compromise. Another witness examined as D.W-2 also admitted during the cross examination that the share holders never made any objection against grant of individual patta and they never insisted for issuance of joint patta in the name of all the four brothers. He had also admitted that the patta was granted on the basis of the enjoyment by the respective shareholders. Neither D.W-1 nor D.W-2 disputed or denied the grant of Natham nilavari patta namely Ex.A-3 dated 25.01.1996 issued in the name of the Plaintiff. Further, even as per the deposition of D.W-1 and D.W-2, there is no joint family status in existence necessitating the Plaintiff to file a separate suit for partition. Ex.B-2, namely the Natham patta that was alleged to have been issued in the name of the Defendants were rank forgery fraught with manipulations and corrections. On the other hand, the thoraya patta in Ex.A-3 in the plaint does not contain any manipulations or corrections. Accordingly, the Appellant/Plaintiff had clearly established the title with respect to the suit property and therefore, the Trial Court rightly granted the decree for relief for declaration and recovery of



S.A.No.683 of 2010

possession.

WEB COPY

14. The First Appellate Court harped on technicalities by holding that the settlement deed and sale deed marked as Ex.A-1 and Ex.A-2 does not contain full description of the share that was allotted to Ramakrishnan. However, the First Appellate Court failed to appreciate the depositions given by D.W-1 & D.W-2 and in the light of Ex.A-3, Natham nilavary patta issued in the name of the Plaintiff, it clearly proves and establishes that the larger extent of 3600 sq. ft., was carved out into four shares and each of the brothers were allotted one such share. The D.W-1 during his cross examination had also admitted the said oral partition and even the manner of disposition as stated in the plaint has been admitted implicitly. There is no dispute raised by the Defendants with respect to the validity and genuineness of Ex.A-3 patta. While that being so, the First Appellate Court *suo motu* embarked upon an enquiry in the absence of pleadings regarding the validity and genuineness of patta just on the basis of slight discrepancies. The only question is that there are two pattas issued in the name of the Plaintiff as well as the Defendants with respect to the same measurement. The Defendants did not dispute the division of 4 shares being carved out during oral partition and one such share was allotted to Ramakrishnan. The Defendants also did not dispute the manner of division delineated in the plaint and in fact admitted the mode of division as described



S.A.No.683 of 2010

in the plaint during his cross examination. The aforesaid crucial aspect, clearly shows that Ex.A-3/patta was issued to the Plaintiff on the basis of Ex.A-2/sale deed and therefore the Plaintiff has got absolute title to the suit property and therefore is entitled for relief of declaration and recovery of possession. Of the four shares, the Defendants are already in possession and enjoyment of two shares which is calculated to nearly 1800 sq. ft including the share allotted to his father and Kandasami. The First Appellate Court failed to appreciate Ex.A-1 to Ex.A-3 in the light of the mode of division set out in the pleadings admitted by the Defendants in his cross examination and thereby landed in error by dismissing the appeal without appreciating the oral and documentary evidence in proper perspective.

15. Throughout the judgment, the First Appellate Court failed to appreciate the admissions made by the D.W-1 and D.W-2 which in detail was considered by the Trial Court for granting the decree in favor of the Appellant/Plaintiff. The First Appellate Court did not reverse the said finding of the Trial Court that there was division of properties that took place among the 4 brothers in which 4 equal shares were allotted and the mode of division as delineated in the plaint is accepted by the Defendants. The said finding was not reversed by the First Appellate Court and no reason was also assigned to overlook the crucial finding which tilted the balance and preponderance of



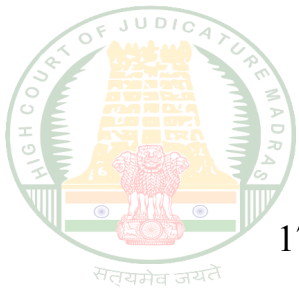
S.A.No.683 of 2010

possibilities in favour of the Plaintiff by the Trial Court to decree the suit.

WEB COPY

Therefore the decree and judgment of the Appellate Court must be set aside and the decree and judgment of the Trial Court shall be restored and the Second Appeal may be allowed.

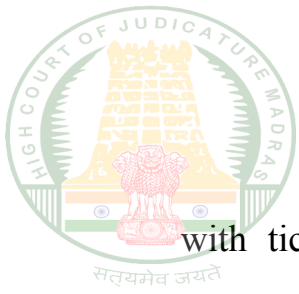
16. The learned Counsel for the Respondents submit that the Appellant says that the property has already been orally partitioned between Ramakrishnan and his brothers As per the oral partition, the suit property was allotted to Ramakrishnan and he executed settlement deed in favour of his wife Pooraniammal, and then Pooraniammal executed the sale deed in favour of the Plaintiff and he obtained patta in his favour. The above facts are not proved by the Plaintiff through document nor the village elders in the village were examined as to what properties were allotted to the 4 sons. The P.W-1 says in evidence that Narayana Padayatchi is the owner of the larger extent of the said suit property and after his death in the year 1965 the suit property was orally partitioned among his 4 sons in the presence of the village elders. The suit property was allotted to Ramakrishnan, the Western side of the property was allotted to Muthukrishnan, the Eastern side of the property was allotted to Kandaswamy, and the adjacent property in the Eastern side was allotted to Rangaswamy.



S.A.No.683 of 2010

17. In the recitals of Ex.A-1 dated 28.12.1967, the settlement deed was executed by Ramakrishnan in favour of Pooraniammal. In Ex.A-2, Pooraniammmal executed a sale deed in favour of the Plaintiff. The recitals under Ex. A-1- does not state that the property was allotted through partition between Ramakrishnan and his brothers. It is alleged that without any rights, he had executed the settlement deed in favour of his wife wherein he had settled $\frac{1}{4}$ undivided share without specifying boundaries. In Ex.A-2 dated 21.07.1989, in this recitals also, Pooraniammal had not stated that she had obtained the property through the settlement deed from her husband and she executed sale deed to the Plaintiff. But the recital stated that the vendor is the owner of the property. The sale deed also shows that the Plaintiff purchased $\frac{1}{4}^{\text{th}}$ share .The total property measures 3600 sq.ft. Therefore the Plaintiff purchased undivided $\frac{1}{4}^{\text{th}}$ share.

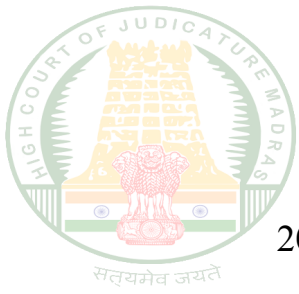
18. The Trial Court decreed the suit based on the manipulated patta. Originally in Ex.A-3 manipulated patta, correction were found and the signature of revenue authorities differed in the place of signature and the Form-4. The patta is forged one. But the Trial Court wrongly gave a finding that the Defendants' patta is manipulated. The Ex.A-3 dated 25.01.1996 stands in the name of the Plaintiff, Rajangam. In the patta it is given as S.No.323/10 measuring 0.0147. But in the Form-1 it is given as S.No.323/4 measuring 0057



S.A.No.683 of 2010

with tick mark. Also the writing of S.No.323/10 measuring 0.0147 is in different ink. The patta that stands in the name of Plaintiff is a manipulated one for the purpose of filing suit.

18. The learned Counsel further submits that the Appellant filed the tax receipts, Ex.A-4 and Ex.A-5. Ex.A-4 shows the Door No.552/a and Ex.A-5 shows the Door No.552/b and the tax collecting authorities signature was not found. The tax receipt, Ex.A-4 is for the year 1999-2000. Ex.A-5 is for the year 2000-2001 and Ex.A-6 is for the year 2004-2005, issued on 12.01.2005. In the year 2001-2003, tax was not paid and the receipt were fabricated to file the suit. The Plaintiff, in his cross-examination, admitted that Ex.A-1 settlement deed is executed towards $\frac{1}{4}$ undivided share and no boundaries were specified. The Plaintiff had not proved that the suit property was orally divided between Ramakrishnan and his brothers. The Plaintiff purchased $\frac{1}{4}$ undivided share only. Therefore, Ramakrishnan had no right to execute any document. As per settlement deed, Poorani Ammal has no right to execute sale deed. The settlement and sale deed are invalid. If the Plaintiff purchased the undivided share from Poorani Ammal he is entitle to file a suit for partition and then he can have share. Without partition the Plaintiff has no right in property.



S.A.No.683 of 2010

20. Heard Mr.D.Rajasekar, learned Counsel for the Appellant and

Mr.P.Dhanyakumar, learned Counsel for the Respondents 2 to 9.

21. Perused the materials available in original records in O.S.No.309 of 2005 and A.S.No.44 of 2008 and also the judgment dated 25.02.2010 passed in A.S.No.44 of 2008 by the learned Principal Sub Judge, Villupuram and the judgment dated 31.10.2006 passed in O.S.No.309 of 2005 by the learned Principal District Munsif, Ulundurpet.

22. On perusal of the judgment of the learned Principal District Munsif, Ullundurpet, it is considered a well reasoned judgment on proper appreciation of evidence. The learned Judge had erred while granting the relief. It is the specific case of the Plaintiff that he had purchased the property from Poorani Ammal wife of Ramakrishnan and the son of Narayana Padayachi. The said Narayana Padayachi had four sons namely, Rangasamy, Kandasami, Ramakrishnan and Muthukrishnan. The suit property was the vacant house site in Grama Natham. Therefore, as per tradition in the villages, the eldest will take the first portion. The extreme west portion was allotted to Muthukrishnan. The next Western portion was allotted to Ramakrishnan. The Eastern side of Ramakrishnan's portion was allotted to Kandasami. Further, east side was allotted to Rangasamy. Since Kandasami died without issues, the property that



was allotted to Kandasami was enjoyed by Ramasamy. The said arrangement was oral partition. The share that was allotted to Ramakrishnan was settled by him through a registered settlement deed dated 28.12.1967 in favour of his wife Poorani Ammal. Poorani Ammal took possession of the property and was in enjoyment of the same. On 21.07.1989, she sold the property for a valid consideration in favour of the Plaintiff.

23. The claim of the Plaintiff regarding enjoyment of the property by name, Ramakrishnan based on oral partition and Ramakrishnan settling the same in favour of his wife was proved through Ex.A-1/certified copy of the settlement deed marked by the Plaintiff during evidence. Further, the claim made by the Plaintiff regarding purchase of the property from Poorani Ammal, the wife of Ramakrishnan through sale deed dated 21.07.1989 was marked as Ex.A-2.

24. On perusal of Ex.A-1 registered settlement deed bearing Doc.No.1671 of 1967 is as follows:

7. // நத்தம் சர்வே 203.1ல் வடக்கு தெருவில் வடபுரம் சரகில் வீதிக்கும் வகிருஷ்ண முர்த்தி வீட்டுக்கும் மே குப்புசாமி மனைக்கும் கிசின்னடுபாண்ணு மனைக்கும் தெ இதில் கிமே கஜம் 6¼ தெவ கஜம் 12. இந்த அபியுள்ள கீழ்மனையும் மேல் கட்டி இருக்கும் காலாணி கூரை சாமன்கள் உள்படவும் உற வீடுவார் குரு டோர்நெ 58 வரி விதிசுபுரு ந 159.8 உறடுநல் காலிமனை வீதிக்குகி பள்ளிக்கூடத்துக்கும் தெ. சின்ன பொண்ணு மனைக்குமே



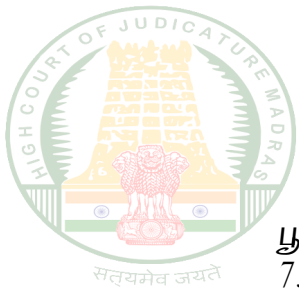
எங்கள் வகையரா வீடுகளுக்கும் வ இதில்கிமே கஜம் 25 தெவ கஜம் 16. இதில் 4ல் 1 பாகம் உறருசாத்து திரு நாவலூர் பஞ்சாயத்து யூனியனைச் சேர்ந்தது. ராமகிருஷ்ணபடையாச்சி. சாட்சிகள் K.சின்னையப்படையாச்சி அ.அய்யாக்கண்ணு படையாச்சி.

25. On perusal of Ex.A-2 registered sale deed by Poorani Ammal in favour of the Plaintiff bearing Doc.No.6 of 1989 is as follows:

“ 1989ம் ஆண்டு ஜூலை மாதம் 21ம் தேதி உளுந்தூர் பேட்டை வட்டம் பாண்டூர் கிராமத்திலிருக்கும் தங்கவேல் படையாச்சி குமாரர் P.T. ராசாங்கம் ஆகிய தங்களுக்கு மேற்படி உளுந்தூர் பேட்டை வட்டம் பாண்டூர் கிராமத்திலிருக்கும் ராமகிருஷ்ண படையாச்சி மனைவி பூரணி அம்மாள் எழுதிக்கொடுத்த சுத்த விற்கிரைய பத்திரம். நான் கீழ்க்கண்ட எனக்கு பாத்தியமான சொத்தை இன்று தங்களுக்கு கிரையம் செய்து கொடுத்து என் குடும்ப செலவுக்காக தங்களிடம் ரொக்கம் பெற்றுக் கொண்டது ரூபாய் 5000 ஐந்தாயிரம். மேற்படி தொகைக்கு இன்று முதல் கீழ்க்கண்ட சொத்தை தாங்கள் சர்வசுதந்திரமாய் தானாதி விற்கிரையங்களுக்கு யோக்கியமாய் ஆண்டு அனுபவித்துக்கொள்ள வேண்டியது. கீழ்க்கண்ட சொத்தில் வில்லங்கம் எதுவுமில்லை. அப்படி ஏதேனும் இருந்தால் நான் முன்நின்று என் சொந்த செலவில் தீர்த்து தருகிறேன்.

சொத்து விவரம்

கள்ளக்குறிச்சி ரி.டி. உளுந்தூர் பேட்டை சப்.டி திருநாவலூர் ப.யூ. எல்லைக்குட்பட்டது பாண்டூர் கிராமத்தில் என் கணவர் ராமகிருஷ்ண படையாச்சி எனக்கு தான செட்டில்மெண்டு எழுதிக் கொடுத்து அதுமுதல் நான் அனுபவித்து வருகிற கி.ந.ச.203/-ல் வடக்கு தெருவில் வடபுறம் சாகில் வீதிக்கும் (வ) குப்புசாமி தோட்டத்துக்கும் (கி) கிருஷ்ணமூர்த்தி வீட்டுக்கு (மே) சின்னப்பொன்னு கிரயமனைக்கும் (தெ) இதன்மத்தியில் கிழமேல் ஜாதி அடி 18 3/4 தென்வடல் ஜாதி அடி 36 இந்த அளவுள்ள 675 ச.அடி கீழ் மனையும் இதில் கிழமேல் ஜாதி அடி 15 X 14 இந்த அளவுள்ள 210 ச.அடியில் கட்டப்பட்டுள்ள முங்கில் கழிகளாலும் விழவாலும் மண்ணாலும் கட்டப்பட்டுள்ள கூவாணி வீடு மேற்கூரை சாமான்கள் கதவுகள் அருவகூடங்கள் வகையராக்கள் உள்படவும் வார்டு 3 கதவு எண் மேற்படி நெ.ல் காலிமனை தென்வடல் வீதிக்கும் (கி) பள்ளிக்கூடத்துக்கும் (தெ) சின்னப்பொன்னு மனைக்கும் (மே)



S.A.No.683 of 2010

WEB COPY

பூரணி வகையரா மனைக்கும் (வ) இதில் கிழமேல் ஜாதி அடி
75 X 48 இந்த அளவுள்ள 3600 ச.அடி மனையில் பொதுவில்
ஜாயிண்டு 4ல் 1 பாகம் 900 ச.அடி தொகைக்கு கிரயம்.
சொத்து மதிப்பு 9940. என் கணவர் 16.12.1967ல் எனக்கு
செட்டில்மெண்டு எழுதிக்கொடுத்துள்ளார்.

26. Therefore, as per the suggestion put to the Plaintiff as P.W-1 by the learned Counsel for the Defendants when 1/4th of share in the property was sold without specifying the extent and measurements, the Plaintiff cannot maintain a suit for declaration of title was denied by P.W-1 in his cross-examination. The learned Judge ought to have considered the recitals under Ex.A-1 and Ex.A-2 and ought to have moulded the relief thereby granting preliminary decree for partition to the Plaintiff instead of granting relief of declaration of title and recovery of possession as prayed for in the plaint. The end portion of the judgment of the learned Principal District Munsif, Ulundurpet, in O.S.No.309 of 2005, alone is found erroneous.

27. While assessing the evidence independently by the learned Subordinate Judge, Villupuram in A.S.No.44 of 2008, the learned Subordinate Judge, Villupuram, had rejected Ex.A-1, settlement deed in favour of his wife Poorani Ammal executed by the husband, Ramakrishnan on the ground that the settlement deed had not been proved by examining the competent witness, scribe or attesting witness as required under Section 68 of the Indian Evidence Act.



WEB COPY

28. It is apposite to extract Section 68 of the Indian Evidence Act which reads as follows:

“68. Proof of execution of document required by law to be attested.

If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence :

[Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (XVI of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.]

[Inserted by Act 31 of 1926, Section 2.]

29. The said finding of the learned Subordinate Judge, Villupuram, is found perverse. There is distinction between Will and Settlement. Will comes into existence immediately after the death of the testator. Therefore, Will has to be proved as per Section 68 of the Indian Evidence Act by examining at least two witnesses. It has to be proved by examining a witness who had seen the execution whereas settlement come into existence immediately. The moment the person executes the settlement deed, he loses his right in the property. A person in whose favour it is executed viz., settlee, he get right over the property immediately. Therefore, the finding of the learned Principal Subordinate Judge, Villupuram, that the settlement had not been proved as per Section 68 of the Indian Evidence Act, is found erroneous. The settlement under Ex.A-1 was



S.A.No.683 of 2010

WEB COPY

executed in the year 1967 and it was registered as Doc.No.1671 of 1967 on the file of the Sub-Registrar, Ulundurpet. As per evidence, the father of the settlor is not alive and the husband of the settlee namely Ramakrishnan is also not alive. This fact was put as suggestion to D.W-1/1st Defendant/Thiru.Narayanasamy and to the person who was examined as D.W-2/Thiru.Radhakrishnan. D.W-1 is the relative of the Plaintiff. The Plaintiff himself claims that the 1st Defendant and D.W-1 is his maternal uncle. Therefore, they are related to the Plaintiff. The 1st Defendant is also related to the deceased, Ramakrishnan, who is the husband of the vendor. Ramakrishnan's wife, Poorani Ammal executed a sale deed dated 21.07.1989 under Ex.A-2 and this is also a registered document in Doc.No.6 of 1989. The registered documents are *bona fide* as per Section 90 of the Indian Evidence Act, 1872, wherein the document is presumed to be genuine if the parties who had signed the documents are not available on the date of trial. Poorani Ammal is dead and Ramakrishnan is also dead.

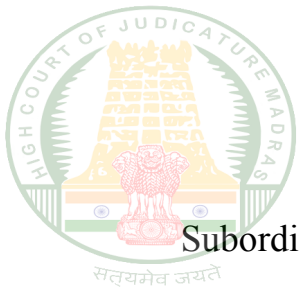
30. On the date of trial, the document under Ex.A-1 is of the year 1967, i.e., it is more than 30 years, thereby, it is presumed to be the *bona fide* document. The observation by the learned Judge was that the parties to Ex.A-1 settlement deed, scribe, and attesting witness were not examined as a witness. Therefore, it is not proved will not hold good. Therefore, the finding of the



S.A.No.683 of 2010

WEB COPY

learned Subordinate Judge, Villupuram, that the settlement deed had not been proved has to be rejected as erroneous. Moreover, the parties to the dispute are relatives, D.W-1 in his evidence had admitted that the execution of the settlement deed by Ramakrishnan in favour of the wife. Similarly, the sale deed executed by Poorani Ammal in favour of the Plaintiff was also admitted. Under those circumstances, the suggestion of the learned Counsel for the Defendants that the suit for declaration of title is not maintainable and that the Plaintiff ought to have filed the suit for partition was denied by P.W-1 in his cross-examination. Therefore, that much of evidence supports the claim of the Plaintiff. The sale of the property by Poorani Ammal in favour of the Plaintiff is admitted by the conduct of the parties before the Trial Court had been properly considered by the learned Principal District Munsif, Ulundurpet, but was rejected by the learned Subordinate Judge, Villupuram. Therefore, the judgment of the learned Subordinate Judge, Villupuram, is erroneous in the light of Ex.A-1 and Ex.A-2. The appreciation of evidence by the learned Principal Subordinate Judge, Villupuram, is not on well reasoned ground in the light of the provisions of the Indian Evidence Act regarding 30 years document, regarding settlement executed by Ramakrishnan in favour of his wife, Poorani Ammal. The specific admission by the 1st Defendant in the witness box regarding Ex.A-1 and Ex.A-2 was lost sight of by the learned Principal Subordinate Judge, Villupuram. Therefore, the learned Principal



S.A.No.683 of 2010

Subordinate Judge, Villupuram, rejecting the evidence of Ex.A-1 and Ex.A-2 is erroneous. Therefore, it has to be set aside.

31. It is apposite to extract Section 90 of the Indian Evidence Act, which reads as follows:

“90. Presumption as to documents thirty years old.

Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purport to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

Explanation. - Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.”

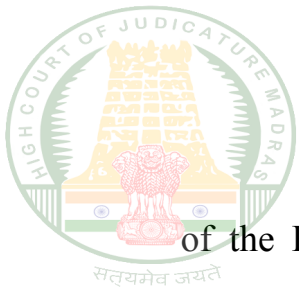
32. The reasoning given by the learned Principal Subordinate Judge, Villupuram, rejecting Ex.A-1 is erroneous. There is no reason to doubt the document under Ex.A-1. Above all, the 1st Defendant as D.W-1 in his cross-examination admitted the suggestion of the learned Counsel for the Plaintiff that Ramakrishnan executed a settlement deed in favour of his wife. The sons of Narayana Padayachi orally divided the properties among themselves was also admitted in cross-examination. Admission is the best evidence as per the provisions of the Indian Evidence Act, when a aggrieved party is expected to challenge each and every contention of the Plaintiff admitted in the cross-



examination that sons of Narayana Padayachi orally divided the properties and that Ramakrishnan, one of the sons of Narayana Padayachi, had executed settlement deed in favour of his wife.

33. He admitted in his cross-examination that the share allotted to Ramakrishnan in the Grama Natham is remaining vacant. Therefore, the suggestion that in the sale deed 1/4th share among the four sons allotted to Ramakrishnan was sold by wife of Ramakrishnan is also admitted. The suggestion regarding patta in the joint name of the Plaintiff and Defendants was denied by him. In cases of this nature, the claim that the Plaintiff is in possession is presumed since the Plaintiff has purchased the share of Ramakrishnan through the wife of Ramakrishnan under Ex.A-2. Therefore, the claim that the Plaintiff failed to prove possession is also unacceptable and the judgment of the learned Principal Subordinate Judge, Villupuram, in A.S.No.44 of 2008 is found erroneous under the provisions of the Indian Evidence Act, in re-assessing the evidence available before the Trial Court through the evidence of P.W-1, D.W-1 and D.W-2 and Ex.A-1 to Ex.A-8 and Ex.B-1 to Ex.B-13.

34. The learned Principal Subordinate Judge, Villupuram, failed to consider the evidence through the documents Ex.A-1 to Ex.A-8, the evidence



S.A.No.683 of 2010

of the Plaintiff as P.W-1 particularly in cross-examination and evidence of

WEB COPY D.W-1 and D.W-2, as per the provisions of the Indian Evidence Act.

Therefore, the finding that Ex.A-1 is not proved is erroneous. Instead of rejecting the contention of the Plaintiff, the learned Principal Subordinate Judge, Villupuram, ought to have confirmed the judgment of the trial Court and modified the judgment thereby granting preliminary decree for partition invoking the powers of the Civil Court in moulding and granting the relief in the facts and circumstances of this case as gathered from the records. Instead, the First Appellate Court had set aside the judgment and decree of the learned Principal District Munsif, Ulundurpet, in O.S.No.309 of 2005, which is erroneous and has to be set aside.

35. On perusal of the document relied on by the Plaintiff under Ex.A-1 and Ex.A-2 it can be clearly understood that the properties had been sold by giving 1/4th share to the Plaintiff which had been ignored by the learned Principal District Munsif, Ulundurpet. If the trial Court had perused the recitals in the settlement deed the Court could have granted the relief granting preliminary decree in favour of the Plaintiff. Instead, the learned Principal District Munsif, Ulundurpet, had decreed the suit as prayed for which resulted in multiplicity of proceedings. In the exchange of notice under Ex.A-9, it is the reply given by the Defendants that the Plaintiff is not entitled to seek

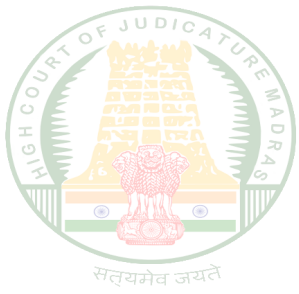


S.A.No.683 of 2010

declaration of title. He ought to have filed the suit for partition seeking his share. The said suggestions of the Defendants was denied by the Plaintiff as P.W-1.

36. It is an accepted fact that in cases where the properties were not sold with specific boundaries and specific extent, then as per the deed, if the property sold is the vacant site in which undivided share is mentioned, the Court shall mould the relief by granting such reliefs. Here, Ex.A-1 and Ex.A-2 states undivided 1/4th share under those circumstances the Plaintiff ought not to have file the suit for declaration of title. By inadvertence, the learned Principal District Munsif, Ulundurpet, had granted the decree by using the words “*Plaintiff is granted a decree as prayed for with costs*”.

37. In the appeal, the suit of the Plaintiff was dismissed and the judgment of the learned Principal District Munsif, Ulundurpet, was set aside. The reason assigned by the learned Sub-Judge, Villupuram, while dismissing the suit, is that the documents in favour of the Plaintiff claims 1/4th share only. Whereas the Plaintiff had instituted a suit for declaration of title to the suit properties and for recovery of possession. Therefore, the rejection of the case of the Plaintiff by the learned Appellate Judge is found erroneous on wrong appreciation of law and facts.



S.A.No.683 of 2010

WEB COPY38. On analyzing the appreciation of evidence, the learned Principal District Munsif, Ulundurpet, had properly assessed the evidence and granted the decree.

39. Further, as per the settled proposition of law laid down by the Hon'ble Supreme Court in the reported decisions in *Betal Singh -vs- State of M.P.* reported in *(1996) 8 SCC 205* and in *V.Sejappa - Vs - State* reported in *2016 (12) SCC 150*, that while appreciating the evidence before the Trial Court, the Trial Court had arrived at a conclusion based on proper appreciation of evidence and the Appellate Court shall not disturb the finding of the Trial Judge, even though there is a possibility of arriving at an opposite finding on the same set of evidence by the Appellate Court. This is because, the Trial Judge had the advantage of observing demeanor of witnesses which is not available before the Appellate Court. Therefore, the finding recorded by the Trial Court shall not be disturbed in the usual course. The Appellate Court have to be cautious on appreciating the evidence of the Trial Court.

40. The documents under Ex.A-1 and Ex.A-2 are not challenged by the Defendants. The only suggestion of the Defendants is that the Plaintiff relying upon Ex.A-1 and Ex.A-2 ought to have filed a suit for partition and not

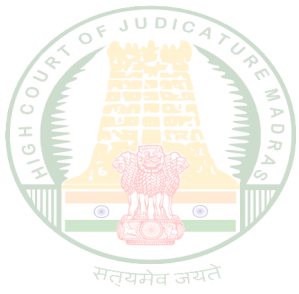


S.A.No.683 of 2010

WEB COPY

for suit for declaration of title. The said suggestion of the learned Counsel for the Defendants before the Trial Court is found justified. When the Plaintiff had purchased a property without specific boundaries and mentioning only the survey numbers with a mention that the property shall be sold to the Plaintiff referring to the survey numbers and referring to 1/4th share in common enjoyed by the Defendants. If the deed relied on by the Plaintiff does not state clearly the extent and the boundaries then based on such document, the Court has to necessarily grant preliminary decree even though the Plaintiff had sought declaration of title and recovery. The judgment of the First Appellate Court is found erroneous on that ground. The judgment of the learned Principal District Munsif, Ulundurpet, is found erroneous regarding the relief portion only granting a preliminary decree is found acceptable in the light of Ex.A-1 and Ex.A-2.

41. The evidence of D.W-1 and D.W-2 admits possession of Ramakrishnan having 1/4th share. Ramakrishnan having executed settlement deed in favour of his wife is entitled to 1/4th share. Therefore, even though the Plaintiff sought declaration of title when the documents relied on by the Plaintiff does not mention the property with the specific boundaries and measurements, then the Court has to grant the decree for partition as the relief has to be moulded invoking power under Section 151 of CPC.



S.A.No.683 of 2010

WEB COPY 42. In the light of the above discussion from paragraphs 22 to 41, the Lower Appellate Court is not correct in finding that Ex.A-1 has not been proved by not examining any attesting witnesses, scribe, when, Ex.A-1 is not testamentary one, and when it comes under proviso to Section 68 of Indian Evidence Act 1872. Accordingly, **the Substantial Question of Law-1 is answered in favour of the Plaintiff and against the Defendants in O.S.No.309 of 2005.**

43. In the light of the above discussion from paragraphs 22 to 41, the Lower Appellate Court is not correct in finding that on the basis of oral evidence of D.W-1 and D.W-2, Poorani Ammal, did not enjoy or in possession of the property, when there is recital to that effect in Ex.A-2, which excludes oral evidence of D.W-1 and D.W-2 under Section 92 of Evidence Act. Accordingly, **the Substantial Question of Law-2 is also answered in favour of the Plaintiff and against the Defendants in O.S.No.309 of 2005.**

In the result, **this Second Appeal stands allowed with costs throughout.** The judgment of the learned Principal Subordinate Judge, Villupuram, in A.S.No.44 of 2008 dated 25.02.2010 is set aside. The decree granted by the learned Principal District Munsif, Ulundurpet, is moulded by



S.A.No.683 of 2010

WEB COPY this Court invoking the powers under Section 151 of CPC thereby granting preliminary decree of partition of 1/4th share in the property having S.No.203/1 as per Ex.A1 and Ex.A-2. The Plaintiff shall file appropriate petition in continuation of the preliminary decree in O.S.No.309 of 2005.

08.07.2025

cda

Index : Yes/No

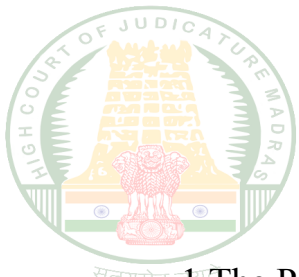
Internet: Yes/No

Speaking/Non-speaking order

Neutral Citation : Yes/No

To

29/31

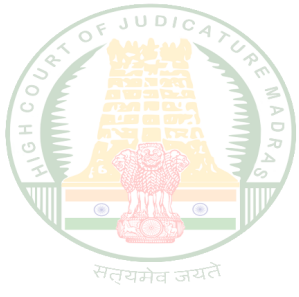


S.A.No.683 of 2010

1.The Principal Subordinate Judge,
Villupuram.

2.The Principal District Munsif,
Ulundurpet.

3.The Section Officer,
VR Section, High Court,
Chennai.



WEB COPY



S.A.No.683 of 2010

SATHI KUMAR SUKUMARA KURUP, J.,

cda

Judgment in
S.A.No.683 of 2010

08.07.2025