

CMP.No.28336 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.06.2025

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Civil Miscellaneous Petition No.28336 of 2024

in

Appeal Suit. No.453 of 2023

1. Chenniappan
2. Kandhasamy
3. Ramasamy
4. Yasodha
5. Minor Vidhya
Rep. By her guardian Mother Yasodha
6. Minor Dharshini
Rep. By her guardian Mother Yasodha

... Petitioners

Versus

1. Nanjammal
Chennimalaigounder (died)
2. Rangathal
3. Baby Bakiyam
Muthusamy (died)
4. Thangamani
5. Minor Kabil
Rep. By mother/guardian Thangamani

... Respondents

Prayer:- Civil Miscellaneous Petition filed under Order 41 Rule 27 of Civil Procedure Code to receive the documents detailed in the accompanying Petition as the additional evidences in the above A.S.No.453 of 2023 on the file of this Court.



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For Petitioners

: Mr.N.Manoharan

For Respondents

: Mr.S.Venkatesh for R1
R2 and R3 Notice served
R4 – Addressee moved
R5 – minor represented by R4.

ORDER

This Civil Miscellaneous Petition had been filed by the Appellants in A.S.No.453 of 2024 seeking to mark documents as additional documents in the Appeal.

2. The learned Counsel for the Petitioners submitted that pending the above Appeal Suit, they have been served with summons in (1) O.S. No. 985 of 2024 filed by one Rangaraj and Velumani to declare the impugned judgment and decree in O.S. No. 386 of 2019 as not binding on them and for declaration of their title and consequential permanent injunction, and (ii) O.S. No. 1001 of 2024 filed by one Sripriya for similar relief. Thereafter, the learned Counsel for the Petitioners submitted that the records were verified and the father/D1/1st Appellant was enquired regarding the same. However, due to advanced age and memory loss, he could not recollect the foundational facts and the nature of the suit



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properties. Hence, steps had been taken to gather the details of the documents relating to the suit properties. On comparison of Ex.A-1 to Ex.A-7 with the suit schedule, it was found that the suit item Nos. 8 to 13 were not purchased by the grand-father late Kandappa Gounder under Ex.A-1 to Ex.A-7. In fact, the great grand-father had owned certain properties which are in the nature of ancestral properties as evident from the extract of Re-Survey and Re-Settlement Register in the year 1912. It was found that 7 survey numbers in item Nos. 8 and 9 of the suit schedule properties are ancestral in nature, which had yielded surplus income to purchase the other suit items. More so, the grand-father late Kandappa Gounder did not have any other independent sources except the income from the ancestral properties (Item Nos. 8 and 9).

3. The learned Counsel for the Petitioners submitted that the first Respondent/Plaintiff had failed to disclose the source of title in respect of Item Nos. 8 to 13 of her father Kandappa Gounder in her plaint. Above all, late Kandappa Gounder had executed various sale deeds in favour of third parties, who have not been impleaded in the suit. He had also mortgaged certain items and redeemed it later. All the revenue records were mutated in the name of the Defendants. The following list of documents would



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WEB CO-2 prove the sale of suit properties much before the filing of the suit: On 26.09.1983 (Doc. No. 3588/1983), the father (D1) and his two sons

Muthusamy (D7) and Arthanareeswaran had entered into a Partition deed with one K.Chennimalai Gounder, S/o. Karuppa Gounder in respect of item 1 (S.F. No. 760) and item 8 (S.F. Nos. 766/1 and 767). Now, one Sripriya, grand-daughter of K. Chennimalai Gounder has filed O.S. No. 1001 of 2024 on the file of the learned First Additional District Court, Coimbatore against the Petitioners and the Respondents, by challenging the decree and judgment in O.S. No. 386 of 2019 and also prayed for declaration and permanent injunction.

4. The learned Counsel for the Petitioners submitted that similarly, Rangaraj and Velumani, the son and daughter of late Ganapathiappan have filed O.S. No. 985 of 2024 on the file of the learned First Additional District Judge, Coimbatore for reliefs similar to that of the prayer in O.S. No. 1001 of 2024. The father of the Plaintiffs in O.S. No. 985 of 2024 had purchased the suit Item 8 (S.F. Nos. 786 and 797) from the father/1st Defendant under a sale deed dated 12.09.1980 (Doc. No. 3493/1980). In both these suits, the Judgment and decree impugned in the above A.S. No. 453 of 2023 have been challenged on the ground that



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certain properties transferred in the year 1980 and 1983 were included in

O.S.No. 386 of 2019, without disclosing the alienations and without impleading the purchasers. They have been in possession and enjoyment of the partitioned suit properties under Ex.B-1 and Ex.B-2, except the extent sold by the Defendants 1 and 5 mentioned above. Further, the second Petitioner along with his son and daughter had mortgaged the suit item Nos. 5 & 6 (S.F. Nos. 600/2, 601/3 and 602/1) in favour of the Coimbatore Cooperative Primary Land Development Bank No. K525, Tatabad, Coimbatore, vide Mortgage deed dated 21.12.2001 (Doc. No. 2706/2001). It was later redeemed by way of a Discharge receipt dated 13.12.2006 (Doc. No. 7202/2006).

5. The learned Counsel for the Petitioners further submitted that earlier the second Petitioner's father (D1) along with his sons Muthusamy (D7) and late Arthanareeswaran had mortgaged the suit item No.1 (Survey No.760) and item 2 (S.F. Nos. 672/2 and 674/1), item 8 (S.F.Nos. 767 and 769) and item 13 (S.F. Nos.760/2, and 770/2) in the name of C.Kandasamy vide mortgage deed dated 18.10.2001 (Doc. No.2121 /2001). Further, the second Petitioner's brother Chenniappan (D3) and his son Sureshkumar had mortgaged the suit item No 5 (S.F. Nos. 603, 612/1 and 612/2) and



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item 6 (S.F. Nos. 600 and 601), item 7 in (S.F. Nos. 594, 598 and 599)

with Canara Bank, Sarkar Samakulam Branch vide MoDT dated 25.11.2011 (Doc No. 7762/2011). It was redeemed by way of Discharge receipt dated 20.03.2020 (Doc. No.2069/2020). Ramasamy, who got certain Items under partition deed marked as Ex.B-2, had sold the suit item No.5 (S.F. Nos. 612/1 and 612/2) to one V. Ramalingam, his wife R.Sivakami and B.Kalaivani, under a sale deed dated 28.11.2013 (Doc. No: 6814/2013). All these documents are reflected in the encumbrance certificate, but the Plaintiff on whom the initial burden lies, has failed to discharge the same. Under such circumstances, his father (D1) was unable to secure and produce all the documents during the time of trial. More so, all the Adangal for the period between 1970 and 1980 issued by the PIO/Head Quarters Deputy Tahsildar, Annur would prove that it stood in the name of the grand-father till 1973, thereafter, it was mutated in the name of the father (D1).

6. All the above documents are in the nature of unimpeachable sterling qualities, which could not be secured during the course of the trial despite due diligence. The documents sought to be produced are very much relevant for deciding the above appeal. In fact, the 1st Respondent should



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have produced the above documents to place the truth before the Court, whereas, she has not placed anything except some vague averments in the plaint. It is submitted that the father (D1) and brother (D3) were following up the trial, but, they could not collect the documents, which are now produced. There is no delay in filing the additional documents. Even otherwise, they have not gained anything by causing delay. No prejudice would be caused to the 1st Respondent in the event of receiving the additional documents to give a quietus to the dispute. The learned Counsel for the Petitioners submit that the additional documents including the contents therein are authenticated and genuine. In a suit for partition, the status of parties is the same and this first appeal is in continuation of the original suit. This High Court has ample power to receive the additional evidence listed hereunder. Hence, this petition is filed seeking leave to file the mentioned documents in the petition as additional evidence in the above A.S. No. 453 of 2023. Otherwise, the Petitioners would be put into irreparable loss and hardships.

7. The learned Counsel for the Respondents submitted that document which are mentioned in Serial Nos. 1 to 15 cannot be taken as additional documents at this stage as the Petitioners had not pleaded it



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either in the Written Statement or in the Proof Affidavit filed by the
WEB CO Petitioners during trial. Therefore, this is an after thought. As these

documents are filed at this stage and even if it is rejected, it is not going to cause prejudice or irreparable loss to the Petitioners, and it is not going to change the Decree and Judgment passed by the Court below to the Petitioners/Appellants. With regard to the averments made by the Petitioners in Para - 5 regarding Serial No. 12, Plaint in O.S.No. 1001 of 2024 on the file of I Additional District Court at Coimbatore, it cannot be taken as an additional document for the reason that the suit is filed after the decree and judgment has been passed in O.S.No.386 of 2019 against which the present Appeal is pending before this Court. With regard to the averments made in paragraph 6 of the application, it is denied and it is submitted that Ex.A-1 to Ex.A-7 are the properties which were purchased by Kandappa Gounder and the sale deeds were also filed in original plaint in O.S.No. 797 of 2006. When it was pending before the learned II Additional Subordinate Judge at Coimbatore, during the course of the hearing the 1st Respondent came to know about item Nos.8 to 13 which were also the properties of Kandappa Gounder. On coming to know about the properties of Kandappa Gounder this Respondent immediately filed I.A. No.82 of 2018 for including the item Nos.8 to 13 properties belonging



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to Kandappa Gounder in the plaint in O.S. No.797 of 2006 later changed as
O.S.No. 386 of 2019. The I.A. No. 82 of 2018 was filed under Order VI

Rule 17 of CPC. The Appellants/Petitioners did not oppose or object the inclusion of Item No 8 to 13 properties as they were the properties of Kandappa Gounder. Therefore, the trial Court allowed the application No.82 of 2018 in O.S.No. 797 of 2006 later changed to No.386 of 2019, on 21.02.2018

8. The learned Counsel for the Respondents submitted that the plaint was also amended to include item Nos. 8 to 13 along with item Nos.1 to 7 as the properties of Kandappa Gounder for which also no additional written statement was filed by the Petitioners/Appellants before the trial Court, and also during the chief examination and cross examination of the Plaintiff and Defendants. The Defendants/Petitioners/Appellants did not raise any objection on inclusion of item Nos.8 to 13 of suit schedule properties belonging to Kandappa Gounder. Therefore, it can be safely presumed that the properties in Item Nos.8 to 13 are the properties of Kandappa Gounder who had undivided properties during his life time. With regard to the averment made in paragraphs 8 to 12, it is denied and the Respondents submit that the trial Court has well discussed



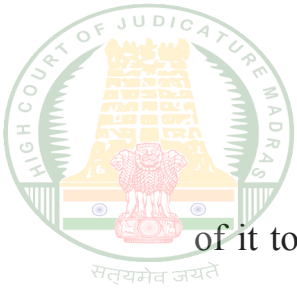
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in its judgment relating to Ex.B-1 which is the partition deed dated 19.09.1979. The Court below has rightly held that "the Defendants claim

that the Plaintiff has been ousted from the suit properties. The Defendants have not proved exclusive possession with animus and with the knowledge of true owner. The Defendants being in secret possession of making secret alienation through Ex.B-1 and Ex.B-2 partition deeds will not amount to ouster"

"The partition deed Ex.B1 and the rectification deed Ex.B3 cannot be held to be binding on the plaintiff when she is not a party to the document. So the stand of Defendants that as there was a partition as early as 1979, the plaintiff is not entitled to claim the share now is held to be not acceptable".

9. The learned Counsel for the Respondents submitted that with regard to the averment made in paragraph 9 of the application, the first Respondent denies the same and submits that the suits which are mentioned vide O.S. No. 985 of 2024, O.S.No.1001 of 2024 are based on the partition deed namely Ex. B-1 to Ex.B-3 through which the properties were illegally conveyed to the Petitioner's family and they have sold a part

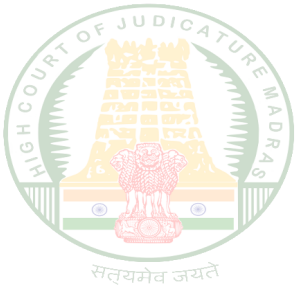


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of it to some third parties and the third parties have a filed suit which has been stated above and mentioned in Sl.Nos.11 and 12. The said suits are not binding on the first Respondent and further all the suits were filed in the year 2024 which will clearly indicate that the Petitioners had set up third parties to file a suit in order to create unnecessary confusion and also to get the partition decree in favour of the first Respondent/Plaintiff as null and void, and prevent her from enjoying the fruits of the decree and judgment rendered in O.S.No. 386 of 2019. The first Respondent denies that the father/D1 namely the first Petitioner's father, Chennimalai Gounder had purchased item 8 property in Survey Nos.786, 797 under a sale deed dated 12.09.1980 vide Document No.3493/1980 on reading the additional document No.1, Document No.3493 of 1980 as the recitals of the documents clearly shows

“1980ம் வருடம் செப்டம்பர் மாதம் 12ந் தேதி கோயமுத்துர் தாலுகா வெள்ளாணைப்பட்டி கிராமம் கஸ்பா 5/75C வீட்டில் வசிக்கும் குடித்தனம் மாரப்ப கவுண்டர் குமாரர் கணபதியப்பனுக்கு ஹைபூர் 4/9 & B நெ. வீட்டில் வசிக்கும் குடித்தனம் கந்தப்ப கவுண்டர் குமாரர் சென்னிமலைக் கவுண்டர் (1) ஹையார் மக்கள் மைனர்கள் சுமார் 14 வயதுள்ள அத்தனாரி ஈஸ்வரன் (2) சுமார் 8 வயதுள்ள முத்துச் சாமி (3) மேற்படி 2, 3 லக்கமிட்ட மைனர்களுக்கு கார்டியனும் தகப்பனுமான மேற்படி 1 லக்கமிட்ட சென்னிமலைக் கவுண்டர் தனக்காகவும் மைனர்களுக்காகவும் சேர்ந்து எழுதிக் கொடுத்த கிரய சாசனம் எங்களுக்கு 19.09.1979 தேதியில் பாகசாசனம் எழுதி காந்திபுரம் SRO 2876/1979 நெம்பராக ரிஜிஸ்டர் ஆகி இருக்கும் பாக சாசனப்படி பாத்தியப்பட்ட.”



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10. At the risk of repetition, the first Respondent submits that the Document No. 3493/1980 sale deed is based on Ex.D-1 to Ex.D-3 partition deed No.2876/1979 dated 19.09.1979. As the trial Court had already held that the partition deed does not bind on the first Respondent/Plaintiff and thereby, anything done on the basis of the above partition deed also does not bind on the first Respondent/Plaintiff.

11. The first Respondent submits that Sl.Nos. 13 and 14 mentioned in the application indicate the name of Kaliappa Gounder who is none other than the father of Kandappa Gounder and Kandappa Gounder had a brother whose name is Chennimalai Gounder. Unless specific documents relating to above mentioned properties are filed, unless they are properly pleaded before the Court below and before this Hon'ble Court, the Petitioners cannot rely on Sl.Nos. 13 & 14. With regard to Sl. No. 15 consumer ledger EB Department, this cannot be considered as a title document and it does not confer any title to the Petitioners/Appellants.

Point for Determination:-

Whether this Miscellaneous Petition is to be allowed during the pendency of this Appeal?



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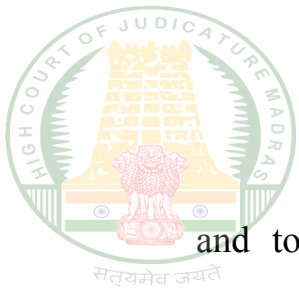
WEB COPY 13. Heard the learned Counsel for the Appellants/Petitioners, Mr.N.Manoharan and the learned Counsel for the first Respondent.

14. Perused the affidavit of the Petitioners and the Counter filed by the first Respondent.

15. Perused the records in O.S.No.797 of 2006 on the file of the learned Second Additional Sub Judge, Coimbatore on transfer to the Court of the learned First Additional District Judge, it was renumbered as O.S.No.386 of 2019.

16. On perusal of the records, it is found that the trial commenced on 15.07.2009, on examining the Plaintiff as P.W-1 and the trial concluded on 10.09.2022, on examination of D.W-3, the documents mentioned in the Petition are marked under Ex.B-3, rectification deed dated 10.04.2013 and Ex.B-9, the mortgage deed dated 18.10.2001. The Judgment was pronounced on 23.01.2023.

17. The Court need not exercise discretion to permit the Appellant



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and to mark documents on the principle of continuation of the trial

proceedings. Therefore, the parties to the dispute before the trial Court are

entitled to mark documents. The Court has to exercise discretion

cautiously. The Appellant herein was the Defendant before the trial Court

and he had every opportunity to mark these documents, except the Suit

referred by him in O.S.No.1001 of 2024, which is subsequent to the Suit

for partition subsequent to the Judgment of this Court in O.S.No.386 of

2019. The Suit in O.S.No.1001 of 2024 has no bearing or binding on this

Court deciding the Appeal. The Appeal is decided on merits. The principle

of lis pendens applies to the party to the dispute in O.S.No.1001 of 2024.

Therefore, the attempt of the Defendant seeking to mark additional

documents before the Appellate Court cannot at all be accepted, as it is

merely an exercise in futility, when he had all the opportunity of marking

documents, but he did not choose to mark such documents and thereby,

suffered a decree, the attempt of the Defendant to mark additional

documents are documents which were already in the knowledge of the

Defendant and for which he already had the opportunity to procure

documents and mark them during trial is not permissible. Since he had not

exercised due diligence during trial, he cannot be allowed to mark such

documents in the Appeal. The objection of the learned Counsel for the



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Respondent in the counter is found acceptable in the light of the facts and circumstances of this case as gathered from records. Therefore, in the light of the objection and in the light of the specific provision under Order XLI, Rule 27 of Code of Civil Procedure, it cannot be exercised mechanically. Hence, this Petition is to be dismissed.

18. In the light of the above discussion, the point for consideration is answered in favour of the first Respondent/Plaintiff and against the Petitioners/Defendants.

In the result, this ***Civil Miscellaneous Petition is dismissed. No costs.***

30.06.2025

dh

Index : Yes/No

Internet: Yes/No

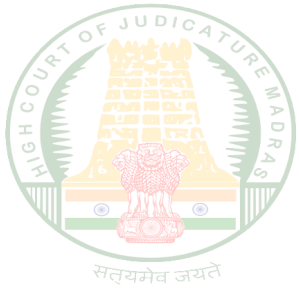
Speaking/Non-speaking order

To

1. The First Additional District Judge,
Coimbatore.

2. The Section Officer,
V.R.Section,
High Court, Madras.

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SATHI KUMAR SUKUMARA KURUP, J.,

dh

Order made in
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in
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30.06.2025