



A.S.(MD)No.171 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 29.11.2025

PRONOUNCED ON:31.01.2025

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

A.S.(MD)No.171 of 2022

and

C.M.P.(MD)No.7227 of 2022

1.Parimala
2.Angayarkanni
3.Savithri
4.Shanthi
5.Murugesan

:Appellants/Defendants 5 to 9

Vs.

1.S.Rajaperumal

: 1st Respondent/Plaintiff

2.Marimuthu
3.Chandru
4.Deivanai

: Respondents 2 to 4/
Defendants 2 to 4

PRAYER:- Appeal Suit filed under Section 96 of the Code of Civil Procedure against the Judgment and Decree of I Additional District and Sessions Judge (PCR), Tiruchirappalli in O.S.No.62 of 2011, on 09.09.2021.



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For Appellants : Mr.R.Sundar Srinivasan

For Respondents :Mr.K.S.Vamsidhar
for R.1
: R.2 and R.3 dispensed with

JUDGMENT

The Appeal Suit is directed against the order passed in O.S.No.62 of 2011, dated 09.09.2021, on the file of I Additional District Court, Tiruchirappalli.

2. For the sake of convenience and brevity, the parties will hereinafter be referred as per their status/ranking in their original suit.

3. The appellants are the defendants 5 to 9, legal heirs of the deceased first defendant. The first respondent as plaintiff has filed the above suit to declare that the plaintiff is the sole and absolute owner of the suit property and consequently to deliver the possession of the suit property and for damages for use and occupation of the suit property.



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4. The case of the plaintiff is that the suit property originally belonged to one Sandhanam Muthuraja as he had purchased the suit property from one Pitchai Pillai vide sale deed dated 09.06.1933, that after the death of Sandhanam Muthuraja on 09.05.1974 intestate, his two sons Marudhai and Ganesan and their legal heirs have sold the suit property through their Power Agent to the plaintiff vide sale deed dated 12.08.2010, that since Sandhanam Muthuraja was the resident of Sri Lanka, after his purchase, he entrusted the suit property in the custody of his younger brother Ponnambalam Muthuraja, who was the resident of Srirangam and after the death of Ponnambalam Muthuraja, his only daughter – first respondent has been taking care of the suit property, that the first defendant does not have any right, title or interest in the suit property and like his father, she is also a licensee, that the defendants 2 and 3 claims to be the tenants of the suit property under the first defendant, that the plaintiff was assured by his vendors as well as the first defendant that they would vacate the property within a short time and hand over the physical possession of the suit property to the plaintiff, that though the first defendant has agreed to vacate the suit property, but subsequently taken a stand as if she had a share in the suit property and that therefore, the plaintiff was constrained to file the above suit to



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declare his title to the suit property and also for recovery of possession and damages.

5. The defence of the first defendant is that the suit property is a joint family property purchased in the name of Sandhanam Muthuraja out of joint family funds and for the interest of joint family consisting of Sandhanam Muthuraja, Sappani, Rengasamy and Ponnambalam, that the suit property jointly belonged to Sandhanam and his three brothers, that Sandhanam Muthuraja had three children namely Maruthai, Ganesan and Deivanai - 4th defendant herein, that Sappani had a daughter by name Kamalam, that Rengasamy had no issues and the said Ponnambalam had a daughter by name Rajalakshmi, that since Sandhanam Muthuraja and his three brothers had died intestate, the suit property came to be owned by the legal heirs of Sandhanam Muthuraja and his two brothers, that the sale obtained by the plaintiff from Maruthai and Ganesan, sons of Sandhanam Muthuraja is legally invalid, that since the suit property came to be owned also by Sandhanam Muthuraja's daughter Deivanai and Kamalam, daughter of Sappanni and the first defendant – daughter of Ponnambalam Muthuraja, that the suit is bad for non-impleading the necessary parties and that since the plaintiff has filed the above suit



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suppressing the material facts and to cheat the shares of the other legal heirs, the suit is liable to be dismissed.

6. Pending suit, one Vadivel claiming himself to be the Power Agent of Deivanai, the alleged daughter of Sandhanam Muthuraja, has filed a petition to get himself impleaded in the suit and subsequently Deivanai represented by her Power Agent Vadivel came to be impleaded as 4th defendant in the suit. The fourth defendant has filed a written statement cum counter claim to declare that the sale deed dated 12.08.2010 alleged to have been executed by Maruthai and Ganesan in favour of the plaintiff is legally invalid and the same does not bind the fourth defendant's share of 1/3 in the suit property. But the defence of the fourth defendant is that the suit property came to be purchased by her father Sandhanam from Pitchai Pillai, vide sale deed dated 09.06.1933, that except the fourth defendant and her brothers Maruthai and Ganesan, no other person is having any right or share over the suit property, that since Sandhanam Muthuraja died intestate on 09.05.1974, the fourth defendant along with her two brothers have become entitled to the suit property and that since the fourth defendant is having share in the suit property, she was constrained to file the counter claim.



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7. Pending suit, the first defendant died and her legal representatives were impleaded as defendants 5 to 9. The ninth defendant has filed a written statement reiterating the contentions raised by the first defendant in the earlier written statement.

8. The learned trial Judge, upon perusing the pleadings of both parties has framed the following issues:

(i) Whether the plaintiff is entitled to the declaration as the absolute owner of the suit scheduled property and entitled to the vacant possession as prayed for?

(ii) Whether the plaintiff is entitled to damages for the use and occupation of the defendant?

(iii) Whether the plaintiff is entitled the mesne profits as prayed for?

(iv) Whether the suit is bad for non joinder of necessary parties?

(v) What relief?

Additional Issues:

(i) Whether D5 to D9 are the Co-shares of the schedule property?

(ii) Whether the suit is barred by limitation?



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9. During trial, the plaintiff has examined himself as P.W.1 and one witness Thiru.Chandran as P.W.2 and exhibited 7 documents as Exs.A.1 to A.7. On the side of the defendants 5 to 9, they have examined 9th defendant as D.W.1 and one other witness Tmt.Pushpamalar as D.W.2 and exhibited 8 documents as Exs.B.1 to B.8. The fourth defendant has examined her Power Agent as D.W.3 and exhibited his copy of the driving licence as Ex.X.1. The learned trial Judge, upon considering the pleadings and evidence both oral and documentary and on hearing the arguments of both sides, has passed the judgment and decree dated 09.09.2021, declaring that the plaintiff is the lawful owner of the suit property and directed the defendants 2, 3 and 5 to 9 to vacate the suit property and hand over the possession of the same to the plaintiff in two months and permitted the plaintiff to work over his remedy for damages through separate proceedings under Order 20 Rule 12 C.P.C. Aggrieved by the impugned judgment and decree, the defendants 5 to 9 have preferred the present appeal.

10. The learned Counsel for the appellant would submit that the suit property jointly belonged to the joint family consisting of



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Sandhanam, Sappani, Rengasamy and Ponnambalam, that the plaintiff himself has produced and marked mortgage deeds dated 01.07.1946 and 26.07.1946 under Exs.A.5 and A.6 respectively which came to be executed jointly by Sandhanam Muthuraja and Ponnambala Muthuraja which would go to show the character of the property as joint family property, that the defendants have questioned the very genuineness and validity of the alleged power of attorney under which the plaintiff claimed title and also the execution of the sale deed in favour of the plaintiff by the alleged legal heirs of Sandhanam Muthuraja, but the plaintiff has not impleaded the alleged vendors and the Power Agent as parties to the suit nor examined any of the above parties, that the plaintiff himself admitted that the possession of the suit property remains with the first defendant and the plaintiff did not get the delivery of possession of the property at the time of obtaining sale deed under Ex.A.2, that if really the transaction was genuine one supported by consideration, the plaintiff would not have paid the sale consideration without getting possession of the suit property, that the plaintiff has not offered any reason or explanation as to why the delivery was not effected and more importantly when the alleged vendors did not have possession of the property at that time, that the plaintiff has miserably failed to produce the legal heirship



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certificate of Sandhanam Muthuraja, when the plaintiff has taken a stand that the fourth defendant is not the daughter of Sandhanam Muthuraja and even after she was impleaded as 4th defendant in the suit and that the plaintiff who seeks to recovery of possession on the strength of title must establish clear and valid title, but the plaintiff has failed to prove the alleged clear title.

11. The learned Counsel for the plaintiff would submit that the suit property was the absolute property of Sandhanam Muthuraja, that the defendants would admit that the plaintiff purchased the property from the sons of Sandhanam Muthuraja and they have not disputed the said purchase made by the plaintiff, that the burden of proof that the suit property was joint family property is upon the defendants 1, 5 to 9, but they have not discharged their burden, that 9th defendant in his evidence would admit that there was no joint family nucleus and as such, it can easily be inferred that the property is not joint family property, that in Ex.A.5 mortgage deed itself, it has been stated that the suit property came to be purchased by Sandhanam Muthuraja, vide sale deed dated 09.06.1933, that Ponnambalam himself did not claim any share in the suit property at that point of time, that D.W.1 would admit that neither



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Ponnambalam nor the other brothers of Sandhanam Muthuraja made any claim in respect of the suit property, that the original title deeds with regard to the suit property were only with Sandhanam Muthuraja, who was the resident of Sri Lanka, that the property tax assessments and the receipts were also in the name of Sandhanam and not in favour of Ponnambalam or in favour of the first defendant and that the learned trial Judge, considering the pleadings and the evidence in a proper way, has rightly decreed the suit.

12. The points for consideration are:

(i) Whether the learned trial Judge erred in giving a finding that the suit property is the separate and absolute property of Sandhanam Muthuraja, despite showing that two mortgage deeds came to be executed jointly by Sandhanam Muthuraja and his brother Ponnambala Muthuraja and that there was absolutely no explanation for the same?

(ii) Whether trial Court erred in not considering the material aspect that though the plaintiff admitted that the possession of the suit property was originally with Ponnambala Muthuraja and now with the first defendant and her tenants, he has not offered any explanation as to why the same was not disclosed in the sale deed taken by the plaintiff from



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the sons of Sandhanam Muthuraja, but it was stated that the possession was handed over to the purchaser at the time of sale consideration?

(iii) Whether the defendants 1, 5 to 9 discharged the burden of proof that that the suit property is the joint family property of Sandhanam Muthuraja and his brothers?

(iv) Whether the judgment and decree dated 09.09.2021 passed by the trial Court is liable to be intererred with?

(v) To what other reliefs, the parties are entitled to?

13. It is admitted by both parties that Sandhanam Muthuraja who was the resident of Sri Lanka had three brothers namely Sappani, Rengasamy and Ponnambalam, that the first defendant is the only daughter of Ponnambalam Muthuraja, that Sappani had one daughter by name Kamalam and that the other brother Rengasamy had no issues. The fourth defendant has claimed that Sandhanam Muthuraja had a daughter Deivanai - 4th defendant herein and two sons namely Maruthai and Ganesan, but according to the plaintiff, Sandhanam Muthuraja had only two sons and the fourth defendant is not the daughter of Sandhanam Muthuraja. Regarding the nature of the suit property, it is the specific



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case of the plaintiff that the suit property is the separate and self-acquired property of Sandhanam Muthuraja, but whereas according to the defendants 1, 5 to 9, the suit property is the property owned by the joint family consisting of Sandhanam Muthuraja and his three brothers. It is also not in dispute that Sandhanam Muthuraja and his three brothers had died intestate.

14. Before entering into further discussion, it is necessary to refer the legal position with regard to the burden of proof when nature and character of the property is in dispute. The Hon'ble Supreme Court in ***D.S.Lakshmaiah and another Vs. L.Balasubramanyam and another*** reported in ***AIR 2003 SC 3800*** has reiterated the settled legal position that the person who claims that the property in dispute is joint family property is duty bound to prove the same and the relevant passage is extracted hereunder:

“The legal principle, therefore, is that there is no presumption of a property being joint family property only on account of existence of a joint Hindu family. The one who asserts has to prove that the property is a joint family property. If, however, the person so asserting proves that there was nucleus with which the joint family property could



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be acquired, there would be presumption of the property being joint and the onus would shift on the person who claims it to be self-acquired property to prove that he purchased the property with his own funds and not out of joint family nucleus that was available. “

15. In the case on hand, in the written statement, the first defendant has taken a specific stand that the suit property came to be purchased by Sandhanam and his three brothers with the help of joint family income and in the name of Sandhanam being the elder member of the family and the relevant portion is extracted hereunder:

“வழக்கிடைச் சொத்தை மிச்சை மிள்ளை என்பவரிடமிருந்து கடந்த ௧961ஆம் ஆண்டு மருதை முத்துராஜாவின் மகன்களான 1.சந்தானம் 2.ரெங்கசாமி 3.சப்பாணி 4.பொன்னம்பலம் ஆகிய நான்கு ஸ்திரீகளும் சேர்ந்து பொது குடும்ப வருமானத்தை கொண்டு குடும்பத்தின் முத்த உறுப்பினரான சந்தானம் முத்துராஜாவின் பெயரில் கிரையம் வாங்கப்பட்டது.”

16. As per the settled legal position, the duty is cast upon the first defendant and now the defendants 5 to 9 to prove that the suit property was the joint family property. Since the first defendant died pending suit,



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as already pointed out, his legal representatives were brought on record as defendants 5 to 9 and 9th defendant has entered into the witness box and in the chief examination affidavit, D.W.1 would say that the suit property was purchased in the name of Sandhanam Muthuraja by Sandhanam and his three brothers jointly and treated as the joint family property. But in cross-examination, he would admit that neither Maruthai nor his sons had any ancestral property or ancestral nucleus and the relevant portion is extracted hereunder:

“ ஆதியில் ருந்த மருதை என்பவருக்கு 4 பையன்கள். அவர்கள் சந்தானம்இ ரெட்சாமிஇ சப்பாவிஇ பொன்னம்பலம் ஆகியார்கள் ஆவார்கள். மருதைக்காஇ அவரது மகன்களுக்கா பூர்விக சொத்துக்கள் மற்றும் தொகை எதுவுமில்லை.”

17. When a specific question was put to him that the suit property was purchased by Sandhanam, he would reply that the property was purchased with the help of the income of four brothers. But he would admit “வா.சா.ஆ.2 ஆவணத்தில் நேத சொத்தை விற்பனை செய்தவர் சந்தனம் என்பவரிடமிருந்து தான் கிரைய தொகை பெற்றுள்ளதாக கண்டுள்ளது என்று சொன்னால் சரிதான். மற்படி ஆவணத்தில் மற்ற 3 நபர்களின் எந்த ுகாதாவிலும் காண்பிக்கப்படவில்லை என்று சொன்னால் சரிதான்.”



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18. It is not the specific case of the first defendant or the defendants 5 to 9 that Maruthai, father of Sandhanam and his brothers was owning ancestral properties or that Sandhanam and his brothers had joint family properties and that the suit property came to be purchased with the help of the income derived from the ancestral or joint family properties. Though the first defendant in the written statement has alleged that the suit property was purchased with the help of the joint family income, before the trial Court he would take “U” turn and depose that the suit property was purchased with the income of four brothers.

19. As already pointed out, the first defendant and the defendants 5 to 9 had mainly relied on the mortgage deed which came to be executed by Sandhanam Muthuraja along with his brother Ponnmbalam Muthuraja to canvass their case that the suit property was treated as joint family property. D.W.1 would reiterate the same in his cross-examination

“வா.சா.ஆ.5 ஆவணத்தை சந்தனத்துடன் ுசர்ந்து பொன்னம்பலமும் எழுதிக்கொடுத்தார் என்ற அடிப்படையில்தான் சொத்து பொது குடும்ப சொத்து என்று கூறுகிறான் என்றால் சரிதான்.” But he would admit “வா.சா.ஆ.5 ஆவணத்தில் சொத்து பொது குடும்ப சொத்து என்று காண்பித்துள்ளதா என்றால்



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லேலை. இந்த ஆவணத்தில் 1 லேக்கமிட்டவர் சந்தனம். 2 லேக்கமிட்டவர் பொன்னம்பலம் என்றால் சரிதான் பொன்னம்பலம் ுசர்ந்து எழுதிக்கொடுத்த வா.சா.ஆ.5 ஆவணத்தில் சந்தனம் விலைக்கு வாட்கி அவர் அனுபவித்துவருவதாக மட்டும் தான் காண்பிக்கப்பட்டுள்ளது என்று சொன்னால் சரிதான். “

20. At this juncture it is necessary to refer the recitals in Ex.B.2 – mortgage deed dated 01.07.1946:

“எட்களில் 1 லக்கமிட்டவர் சென்ற 9.6.33ல் எழுதி ஸ்ரீரெட்கம் சப்ரெஜி!டாரர் ஆமி! 1 புக 567வது வால்டும் 262 & 263 பக்கட்களில் 1087 நெம்பராக 10.6.33ல் ரெஜி!டர் செய்து வாட்கிய கிரைய சாசனப்பத்திரப்படி நாளது வரை சர்வ கதந்திரமாக அனுபவித்து வருகிற கீழ்க்கண்ட வீடு மனையை நாளது”

21. As rightly contended by the learned Counsel for the plaintiff, the first defendant's father Ponnambalam is a party to the said document as one of the executant, but he has not raised any objection with regard to the above recitals. It is also not the case of the first defendant that his father Ponnambalam has claimed right or share in the suit property at any point of time.



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22. D.W.1 in his cross-examination would say “தாவா சொத்தில் தனக்கு பட்டு இருக்கிறது என்று பொன்னம்பலம் எந்த காலத்திலும் எந்த ஆவணமும்இ உயில் சாசனமும் எழுதியுள்ளாரா என்றால் லேலை.” He would also admit that the other brothers of Sandhanam Muthuraja also did not make any claim in the property. D.W.1 would say that “ஏட்சாமிஇ சப்பாணிஇ சப்பாணியின் வாரிசுகள் தட்களுக்கு பட்டு உரிமை உண்டு என்று எந்த காலத்திலும் உரிமை உண்டு என்று கூட்டத்தில்லை.”

23. The case of the plaintiff is that the house tax assessments in respect of the suit property originally stood in the name of Sandhanam Muthuraja and subsequently now in favour of the plaintiff and he has also produced the tax receipt under Ex.A.3. Moreover, the first defendant himself would admit that all the original title deeds were with Sandhanam. As rightly contended by the learned Counsel for the plaintiff, if really the property was joint family property, the original documents would have been with Ponnambalam as he alone was in India. D.W.1 would say that “ சந்தனம் விலைக்கு வாங்கிய அசல் கிரைய பத்திரமும்இ அவர் சூடு வைத்து அசல் சூட்டு கடன் பத்திரமும் என்னிடம் கிடையாது. எல்லா அசல் ஆவண்களும் சந்தனத்திடம் தான் உள்ளது. இந்த சொத்து சம்மந்தமான வரி ரசீதுகள் அனைத்தும் என்னிடம்தான் உள்ளது. வரி



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ரஃதுகள் எல்லும சந்தானத்தின் பெயரில் தான் உள்ளது.” D.W.1 in her evidence would admit that “ நேத வழக்கிற்கான சோத்து வரி ஆரம்ப காலத்தில் நேந்துஇ சந்தானம் பெயரில் நேந்து வந்தது. தற்புபாது சோத்தை விலைக்கு வாங்கிய வாதி பெயரில் உள்ளது என்று சோன்னால் சரிதான். எந்த காலத்திலும் மற்ற சுகாதாரர்கள் பெயரிலும் வரி விதிப்பு ஏற்படவில்லை என்று சோன்னால் சரிதான்.”

24. Considering the above evidence, the learned trial Judge has rightly come to a decision that the defendants 1, 5 to 9 have miserably failed to prove that the suit property in dispute is a joint family property, but on the other hand, the plaintiff through ample evidence has proved that it is the separate property of Sandhanam Muthuraja.

25. Now turning to the case of the fourth defendant alleged to be the daughter of Sandhanam Muthuraja, the plaintiff has specifically disputed the factum that the fourth defendant – Deivanai is the daughter of Sandhanam Muthuraja and that the fourth defendant is a person set up by the defendants 1, 5 to 9 to drag on their claim. It is evident from the records that D.W.3 – Vadivel, after getting his alleged principal impleaded as fourth defendant, has filed a written statement cum counter



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claim wherein the fourth defendant has sought for a declaration that the sale deed dated 12.08.2010 executed in favour of the plaintiff is not legally valid with regard to the fourth defendant's 1/3rd share and that the said sale deed is not binding on the fourth defendant's 1/3rd share and that subsequently when the defendants were set exparte in the original suit, counter claim came to be dismissed for default and that when the exparte order was set aside and the suit was taken on file, the counter claim was not restored to file.

26. It is further evident that after the evidence of the defendants 1, 5 to 9 was over, D.W.3 has filed an application to set aside the exparte order passed against the fourth defendant and thereafter filed his chief examination affidavit. Though the plaintiff has taken a specific stand that there was no such daughter for Sandhanam Muthuraja, the fourth defendant has not produced any iota of evidence to substantiate her claim that she is the daughter of Sandhanam Muthuraja. D.W.3, in his cross-examination would say that “ தெய்வாணை என்பவர் சந்தனத்தின் மகள் என்பதை காண்பிப்பதற்கான ஆதாரம் என்னிடம் இருக்கிறதா என்றால் லேலை. அதை அனுப்புவதாக எனக்கு உபானில் சொன்னார். அந்த ஆவணத்தின் முழு



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விவரம் என்ன என்று எனக்கு தெரியாது. தெய்வாணைக்குத்தான் தெரியும். என்னுடைய முதல்வர் தெய்வாணை ஆரம்ப முதல் கொண்டு லேட்கையில் தான் இருக்கிறார். நான் தேவரை லேட்கைக்கு சென்று தெய்வாணையை பார்த்ததில்லை. அவர் லேட்கையில் எட்டுள்ளார் என்ற விவரம் எனக்கு தெரியாது.”

Even in chief examination affidavit, he would say “தானும் சந்தானத்தின் வாரிசு என்று வேவழக்கில் 4 ம் பிரதிவாதியான தெய்வாணை நிரூபிப்பதற்காக உண்டான ஆவணம் லேட்கையிலிருந்து தபாலில் அனுப்ப ஏற்பாடு செய்துள்ளார்.”

27. Admittedly, the fourth defendant has not appeared in person before the trial Court. Moreover, the learned trial Judge has specifically observed that though that Court has given sufficient opportunity for her appearance before that Court, she did not turn up. As already pointed out, D.W.3 has entered into witness box as Power Agent of the fourth defendant. It is settled law that the agent cannot depose for the principal in respect of the matter which only the principal can have a personal knowledge.

28. It is necessary to refer the judgment of the Hon'ble Supreme Court in *Janki Vashdeo Bhojwani and another Vs. Indusind Bank Ltd.*,



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and others reported in **AIR 2005 SC 439** relied on by the learned Counsel for the plaintiff, wherein it has been held as follows:

“Order III, Rules 1 and 2 C.P.C., empowers the holder of power of attorney to "act" on behalf of the principal. In our view the word "acts" employed in Order III, Rules 1 and 2 C.P.C., confines only in respect of "acts" done by the power of attorney holder in exercise of power granted by the instrument. The term "acts" would not include deposing in place and instead of the principal. In other words, if the power

of attorney holder has rendered some "acts" in pursuance to power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the acts done by the principal and not by him. Similarly, he cannot depose for the principal in respect of the matter which only the principal can have a personal knowledge and in respect of which the principal is entitled to be cross-examined.”

29. As rightly contended by the learned Counsel for the plaintiff, the fourth defendant has not produced the legal heirship certificate of Sandhanam Muthuraja nor any other material to show that she is the daughter of Santhanam Muthuraja. As already pointed out, the



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defendants 1, 5 to 9 have also taken a stand that the fourth defendant is the daughter of Sandhanam Muthuraja, but they have also not produced any iota of evidence to substantiate the same. Considering the above, this Court has no hesitation to hold that the defendants have miserably failed to prove that the fourth defendant is the daughter of Sandhanam Muthuraja.

30. The learned Counsel for the defendants 5 to 9, after the completion of arguments by the plaintiff's side, has taken a new stand challenging the validity and legality of the sale deed dated 12.08.2010 and Power of Attorney deed through which, the sale deed came to be executed. The learned Counsel would submit that since the Power of Attorney document is stated to be executed in Sri Lanka and validated in India and when its genuineness was questioned, the plaintiff must have examined either the principals or at least the power agent, that there is absolutely no evidence to show that how his principals and power agent were known to each other, that the defendants have denied the claim of the plaintiff that he became entitled to the suit property by right of



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purchase and it is not the evidence of the plaintiff that D.W.1 was aware of the execution of the power of attorney by the legal heirs of Sandhanam Muthuraja.

31. As rightly contended by the learned Counsel for the plaintiff, the above pleas were not at all raised in the written statement either by the first defendant or by the defendants 5 to 9 who entered into the picture subsequently. As rightly pointed out by the learned Counsel for the plaintiff, the first defendant in his written statement, has specifically stated that the children of Sandhanam Muthuraja namely Maruthai, Ganesan and Deivanai in collusion with Kamalam, D/o Sappani Muthuraja with an intention to grab the property, had directed the first defendant to vacate the premises and that therefore, the first defendant was constrained to file a suit for partition in O.S.No.535 of 2010, on the file of the Principal Subordinate Court, Trichirappalli. It is not in dispute that the said suit was subsequently dismissed for default and till now that suit was not restored to file.

32. The first defendant has also taken a stand that the sons of Sandhanam Muthuraja alone had no right to sell the suit property and as



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such, the sale deed obtained by the plaintiff from them is legally invalid.

It is not the specific case of the first defendant or the defendants 5 to 9 that the sons of Sandhanam Muthuraja have not executed any sale deed in favour of the plaintiff and that they have created a sale deed with the help of the power of attorney deed, which was also not executed by the legal heirs of the deceased Sandhanam Muthuraja.

33. It is admitted by all the parties that originally the first defendant's father Ponnambalam Muthuraja was in possession and enjoyment of the portion of the property and leased out to two tenants and after his death, the first defendant has been in possession and enjoyment of the property by occupying the portion of the same and leasing out to two other tenants. Pending appeal, the learned Counsel appearing for the appellants has filed a memo stating that the respondents 2 and 3 had already vacated the premises, as such, notice to them may be dispensed with. Since this Court has already given a finding that the property in dispute is the separate property of Sandhanam Muthuraja and the fourth defendant is not the daughter of Sandhanam Muthuraja, the defendants are not entitled to claim any right or share in the suit



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property.

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34. Considering the above, the learned trial Judge has rightly granted the reliefs of declaration and recovery of possession and this Court is in entire agreement with the findings recorded by the learned trial Judge and consequently this Court concludes that the Appeal Suit is devoid of merits and the same is liable to be dismissed.

35. In the result, the Appeal Suit is dismissed. Consequently, the connected Miscellaneous Petition is also dismissed. The parties are directed to bear their own costs.

31.01.2025

NCC : Yes : No

Index : Yes : No

Internet : Yes : No

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To

1. I Additional District and Sessions Judge (PCR), Tiruchirappalli.

2. The Record Keeper,



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Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

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31.01.2025