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S.A.No.1495 of 2002

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	15 / 04 / 2025
Delivered on	09/ 07 / 2025

CORAM:

THE HONOURABLE Mr. JUSTICE P.VELMURUGAN

S.A.No.1495 of 2002

M.Paramasivam

: Appellant

.VS.

1.A.Ravi
2.A.Jayachandran (Died)
3.A.Muthukumar
4.K.Sekar
5.M.Karuppiyah
6.J.Valli

7.Minor J.Prabhakaran,
S/o.Late Jeyachandran,
(7th respondent represented by his mother
and natural guardian 6th respondent.
sixth and seventh respondents are residing
at No.2/33, Bajanai Koil Street, Mangadu Road,
Moulivakkam, Chennai - 125)

(Respondents 6 and 7 brought as legal representatives
of the deceased second respondent vide
order dated 02.03.2016 made in
M.P.(MD)No.1 of 2014 in S.A.No.1495 of 2002)

: Respondents

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree made in A.S.No.95 of 1998, on the file of the III Additional Subordinate Judge, Madurai, dated 28.03.2002, reversing the Judgment and Decree made in O.S.No.167 of 1996, on the file of District Munsif Court, Madurai Taluk, Madurai, dated 21.07.1997.

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For Appellant : Mr.D.Senthil
For Mr.G.Vidhya Maheswaran

For Respondent : Mr.M.Sridhar for R1

* * *

J U D G M E N T

This second appeal is directed against the judgment and decree passed in Appeal Suit No.95 of 1998 by the III Additional Subordinate Court, Madurai, reversing the judgment and decree passed by the District Munsif Court, Madurai Taluk, Madurai in O.S.No.167 of 1996.

2.The appellant is the plaintiff, who instituted the suit in O.S.No.167 of 1996 for a declaration and permanent injunction. For convenience, the parties will be referred to according to their litigative status before the trial court.

3. The short facts of the plaintiff are as follows:

3.1. The plaintiff claims that the suit property, originally owned by Ayyakannu Asari, is a temple house dedicated to Lord Muniyandisamy and Karuppanasamy. Ayyakannu Asari created two wooden chariots, or sapparams, for these deities, which are taken to the village temple during a festival held every two years. The property is meant to be held in trust for the purpose of



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maintaining these sapparams. After Ayyakannu Asari's death, his son Mookanasari continued to manage the property and receive honors during the festivals. Mookanasari passed away, leaving behind the plaintiff and the defendants as legal heirs. The plaintiff asserts that the property is inalienable and indivisible, and he, along with his brother Ayyaganapathy, has maintained it. He emphasizes that the property has been used for festivals consistently.

3.2. It is further stated that both the plaintiff and the defendants' father jointly enjoyed the property through various transactions, including mortgages and leases. On 30.10.1963, the plaintiff and his brother Ayyaganapathy mortgaged the suit property, along with additional land, to Rajagopal Naidu for Rs.1,000. The plaintiff also mentions that his brother, Maragasagayam, who left the village years ago, sold his alleged one-third share in the suit property to V.N. Alagarsamy through a registered sale deed dated 11.01.1961. After learning of this sale, the plaintiff and Ayyaganapathy, the father of the defendants, purchased the property from Alagarsamy on 24.11.1967, for valuable consideration. Additionally, the plaintiff states that on 07.10.1974, he and Ayyaganapathy sold the eastern portion of the suit property, measuring 14 feet east-west and 26 feet north-south, to Rajammal, while retaining ownership of the koil veedu itself. The sale deed for this transaction is attached to the plaint. Since the plaintiff has been living away from the suit property, Ayyaganapathy



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took responsibility for its management, leasing it to third parties. Throughout his life, Ayyaganapathy provided the plaintiff with his share of the rental income from the property. Following Ayyaganapathy's death on 9.11.1995, the defendants allegedly began arrangements to sell the suit property to the fifth defendant.

3.3. The plaintiff further states that the defendants have no independent right to sell the property, as it is a temple house vested in trust for the purpose of maintaining the two sapparams for specific religious purposes established by their grandfather. The fourth defendant was inducted as a tenant in the suit property by the defendants' father and currently operates a betel nut shop there. The defendants have reportedly been collecting the rent but are evading payment of the plaintiff's due share since their father's passing. The plaintiff expresses concern that the suit property may be sold by the defendants to the fifth defendant. Hence, the plaintiff instituted this suit seeking a declaration that the suit property, as a temple house, is inalienable and belongs to both the plaintiff and the defendants, and for permanent injunction restraining the defendants from encumbering the property through any sale or other transactions, as well as future mesne profits.



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4. The suit was resisted by the defendants, *inter alia* contending that the property is not a koil veedu, or temple house, as alleged by the plaintiff. Instead, Ayyakannu Asari originally purchased the property along with adjacent lands in 1919. Ayyakannu Asari created four sapparams dedicated to different deities, including Lord Muniyandisamy and others, and these were kept in multiple locations, not solely in the suit property. The defendants point out that, decades after Ayyakannu Asari's death, a partition occurred among his sons, including Seeni Asari and Mookanasari, regarding the properties they inherited. They assert that while the sons divided their other properties, the sapparams were not included in that partition until much later. Consequently, after the deaths of Seeni and Mookanasari, the sapparams were allocated among their heirs. Specifically, the Muniyandi and Thunai Muniyandi sapparams were assigned to Ayyaganapathy, the father of the defendants, along with other family members. The defendants maintain that since the property was assigned to Ayyaganapathy, he enjoyed it as the absolute owner. Following his death in 1995, the defendants continued to possess and manage the property independently. Hence, according to the defendants, this ownership includes the right to sell the property, which the plaintiff has no claim over. Furthermore, the defendants emphasize that the plaintiff has not actively participated in managing the property and has lived away from it for some time. They assert that the arrangement regarding the sapparams was a private understanding, which did



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not grant the plaintiff any ongoing rights. Thus, it is stated that the property is fully within their control, and they have the legal authority to sell it without the plaintiff's consent. The property is not bound by the alleged trust or inalienable status claimed by the plaintiff, reinforcing their position as the absolute owners of the suit property. Hence, the defendants seek dismissal of the suit, claiming full ownership and rights over the suit property.

5. Before the trial court, on the side of the plaintiff, the plaintiff himself examined as P.W.1, and 4 documents were marked as Exs. A1 to A4. On the side of the defendants, one A.Ravi was examined as D.W.1, and 6 documents were marked as Exs.B1 to B16.

6. The trial court, after considering the oral and documentary evidence from both sides, decreed the suit as prayed for. Aggrieved by the judgment of the trial court, the defendants filed an appeal in A.S No.95 of 1998 before the III Additional Subordinate Judge, Madurai. The lower appellate court reversed the trial court's findings and allowed the appeal. Hence, the plaintiff is before this Court by way of this second appeal.

7. Mr.D.Senthil, learned counsel for the appellant/plaintiff, contends that the first appellate Court while deciding the appeal wrongly proceeded with that



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there was an oral partition between Ayyaganapthy i.e., the father of the defendants 1 to 3, Markasagayam and Paramasivam i.e, the plaintiff and the suit property was allotted to Ayyaganapathy. Such an assumption is erroneous since the defendants 1 to 3 failed to prove the oral partition. The Court overlooked that defendants claimed in their written statement that the suit property was allotted to their father in this alleged partition and that they became absolute owners by inheritance, which they did not substantiate. He would further submit that the burden of proof shifted to defendants 1 to 3 when they made these claims. Furthermore, the lower appellate Court neglected the fact that the suit property, measuring 22 feet east to west and 26 feet north to south, was originally owned by Mookan @ Muthu Asari. After his death, Markasagayam sold a 1/3 undivided share to Alagarsamy. The plaintiff and his elder brother, Ayyaganapathy, purchased this share from Alagarsamy through Ex.A2 dated 24.11.1967, thus jointly owning the entire land. The Court also failed to give proper weight to Ex.A1, a mortgage deed dated 30.10.1963 executed by the plaintiff and Ayyaganapathy for the entire land. Additionally, it overlooked that after Ex.A2, the plaintiff and Ayyaganapathy sold a portion of the property while retaining the suit property, as described in Ex.A3 dated 07.10.1974, which clearly identifies the suit property.



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8. The learned counsel further argues that Exs.A1, A2, and A3 demonstrate that the plaintiff and Ayyaganapathy are joint owners, placing the burden on defendants 1 to 3 to prove their father's absolute ownership. The appellate Court wrongly accepted Ex.B1 to B4 as evidence that Ayyaganapathy owned the suit property, even though these documents were not mentioned in the defendants' written statement. Furthermore, the claim regarding the mortgage of the suit property was only introduced at trial, and had the plaintiff been aware, he would have filed a reply. He would further submit that the appellate Court also erred in asserting that the plaintiff was an attesting witness to Ex.B3, a mortgage deed executed by Ayyaganapathy and as the document was presented through D.W.1, the plaintiff could not comment on its authenticity. If Ex.B3 were genuine, the defendants would have presented it through P.W.1 during cross-examination. The Court's reliance on Ex.B3 and the testimony of P.W.1 was erroneous, as it was marked solely through D.W.1, without the plaintiff's cross-examination. Lastly, the lower appellate Court failed to recognize that defendants 1 to 3 did not provide evidence of ownership or possession of the suit property post-Ex.A1, A2, and A3, nor did they claim possession through ouster or adverse possession, lacking any relevant pleadings. The rejection of Ex.A4, a tax receipt in the father of the plaintiff's name, was also incorrect, as it merely showed that the property remains registered under his name, not that the plaintiff possesses it. Though the trial Court, after considering



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all the materials, decreed the suit, the appellate Court, without considering the same, allowed the appeal and hence, the learned counsel prayed to allow the second appeal.

9. Mr.M.Sridharan, learned counsel appearing for the respondents argues that the property in question is not a temple house (koil veedu) as the plaintiff/appellant claims. Instead, it was originally purchased by Ayyakannu Asari, who created multiple wooden chariots for different deities, which were kept in various locations, not just in the suit property. Following Ayyaganapathy's death, the defendants have continued to manage and possess the property independently. They argue that they have the full legal right to sell it without needing the plaintiff's consent, as he has not participated in its management and has lived away from the property for some time. The defendants emphasize that the plaintiff's claims regarding the property being inalienable and held in trust are unfounded. They argue that there is no binding trust on the property, reinforcing their position as the absolute owners. Without considering the facts, the lower Court decreed the suit; however, the appellate Court rightly set aside the trial Court's order and allowed the appeal, which does not call for any interference by this Court, and hence, the respondents pray for the dismissal of the suit.



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10. The Second Appeal was admitted on the following substantial questions of law:-

"1. Is not the burden on the person to prove the oral partition especially when he claims suit property on the basis of the same?

2. Whether the lower appellate Court is right in dismissing the suit on the basis of certain documents which are not disclosed in the written statement?"

11. The specific case of the plaintiff/appellant is that the suit property is a *koil veedu* (temple house) originally dedicated by his grandfather Ayyakannu Asari for preserving wooden chariots (sapparams) used in religious festivals for deities Muniyandisamy and Karuppanasamy, and hence the property is inalienable and held in trust for religious purposes. He contends that after Ayyakannu's death, his son Mookanasari (the plaintiff's father) managed the property, and later the plaintiff and his brother Ayyaganapathy (father of the defendants) jointly possessed and dealt with it. He relies on Exs.A1 to A3 to show joint ownership and alleges that after Ayyaganapathy's death, the defendants tried to sell the property unilaterally despite having no exclusive right. Hence, the plaintiff sought for a declaration and injunction, asserting the property is meant for religious use and cannot be alienated.



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12. The specific case of the defendants/respondents is that the suit property is not a temple house but private ancestral property originally purchased by Ayyakannu Asari, who made sapparams stored at various places, not limited to the suit property. They assert that the property was orally partitioned and allotted to their father Ayyaganapathy, who possessed it as absolute owner and executed transactions accordingly. After his death, they inherited the property and claim full ownership. They deny that the property has any religious or trust-related nature and argue that the plaintiff, who has been absent and not involved in maintaining the property, has no legal right or claim to it.

13. The trial Court, based especially on Exs.A3 and A4, found that the suit property is a common property of the appellant and the respondents. As per Ex.A3, the suit property is described as a temple house. As per Ex.A4, even after the filing of the suit, the property continued to be in the name of the father of the appellant, and the house tax receipts were in the name of the appellant's father. Therefore, the respondents have not proved the oral partition of the suit property between the appellant and the father of the respondents, and the trial Court decreed the suit. However, the appellate Court, based on Ex.B3, found that the respondents' father was enjoying the property and had mortgaged the property. After the death of the respondents' father, the respondents are

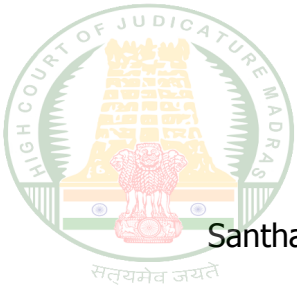


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continuously enjoying the property. Ex.B3 is an othi deed executed by the father of the respondents in favour of one Murugan. In that document, the appellant affixed his signature as an attesting witness. Therefore, the appellate Court held that the transaction would bind the appellant and allowed the appeal, thereby reversing the judgment of the trial Court.

14. A reading of both pleadings and the evidence of the parties shows that, admittedly, the suit property and other properties originally belonged to one Ayyakannu Asari, the predecessor of both the appellant and the respondents. The respondents himself, in paragraph No.5 of the written statement, admitted that Ayyakannu, the predecessor of both parties, made four sapparams (chariots) around 35 years ago. The sons of Ayyakannu Asari, namely Seeni Asari and Mookan Asari, partitioned the properties left by Ayyakannu Asari, but they did not partition the sapparams. Subsequently, after the death of Seeni Asari and Mookan Asari, the sapparams were partitioned among their legal heirs.

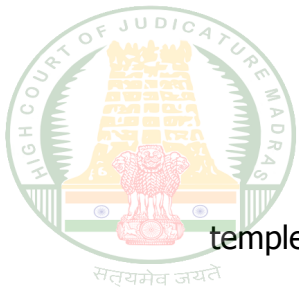
15. Originally, Ayyakannu dedicated the four sapparams to the deities Lord Muniyandi, Lord Thunai Muniyandi, Muthalamman, and Lord Ayyanar and these sapparams were kept in houses including the suit building. Later, after the deaths of Seeni Asari and Mookan Asari, the sapparams were divided among their respective legal heirs. Accordingly, the Ayyanar sapparam was allotted to



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Santhanam Asari, son of Seeni Asari; the Muthalamman sapparam was allotted to Gnanaguru Asari, another son of Seeni Asari; and the Muniyandi and Thunai Muniyandi sapparams were allotted to Ayyaganapathy (father of the respondents), Margasahayam, and Paramasivam (the present appellant). After the death of Santhanam Asari, his son Sivaprakasam sold his house (Door No. 4/1 23-B) to one Vellaichamy. At that time, the Ayyanar sapparam was handed over to Gnanaguru, the brother of Santhanam Asari. The Ayyanar and Muthalamman sapparams are now in the custody of Gnanaguru. The Muniyandi and Thunai Muniyandi sapparams were allotted to Ayyaganapathy, Margasahayam, and Paramasivam and were kept in the house of Margasahayam and Paramasivam. After the sale of their houses by Margasahayam and Paramasivam, the two sapparams came to be kept by Ayyaganapathy.

16. Even according to the case of the respondents, Margasahayam sold his share to one Alagusamy. From Alagusamy, both Ayyaganapathy (father of the respondents) and the appellant purchased the same. Subsequently, except the suit property, the other properties belonging to Ayyaganapathy were sold by the appellant. The sale deed executed by Alagusamy Naidu in favour of the appellant and Ayyaganapathy has been marked as Ex.A2. Later, both the appellant and Ayyaganapathy jointly sold all their common properties except the suit property to one Rajammal under Ex.A3. In Ex.A3, the suit property was referred to as a



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temple house and shown as the western boundary of the property sold. Thus, in 1974, both the appellant and Ayyaganapathy treated the suit property as common property, even in the sale document. Even subsequent to the suit also, the tax paid in the name of the father of the appellant. Although the appellant signed the othi deed, the signature of one co-owner does not mean that the other co-owner relinquished his rights. The othi deed has since been redeemed, and now the respondents are enjoying the property after Ayyaganapathy's demise. Once the respondents admitted in their written statement that the sapparams for Muniyandi and Thunai Muniyandi were allotted to Ayyaganapathy, Margasahayam, and the appellant, and that Margasahayam sold his share to Alaguswamy, from whom the appellant and Ayyaganapathy later repurchased, and that later they jointly sold the property under Ex.A3, in which the suit property is mentioned as a boundary, it is evident that the suit property was treated as common. When the respondents claim an oral partition, it is for them to prove that the suit property was allotted solely to Ayyaganapathy and that they became the absolute owners.

17. Therefore, a reading of the entire materials shows that the trial Court rightly appreciated the oral and documentary evidence, particularly Exs.A2, A3, and A4, which indicate that the suit property is common property of Ayyaganapathy and the appellant. After Ayyaganapathy's demise, the appellant



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and the respondents became joint owners. The burden was on the respondents to prove the oral partition, which they failed to do. The appellate Court wrongly ignored Exs.A3 and A4 and relied solely on Ex.B3, which makes no reference to any oral partition. It merely refers to the property as ancestral. Both the appellant and respondents claim through Ayyaganapathy, who derived title from the successors of Ayyakannu Asari. Exs.A2 to A4 clearly show the suit property is common property.

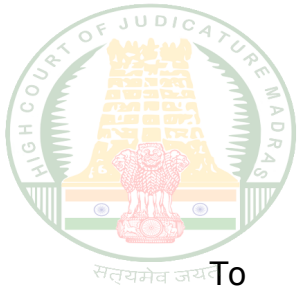
18. Though the trial Court, upon proper appreciation of the evidence, decreed the suit, the appellate Court failed to appreciate the oral and documentary evidence and wrongly relied on Ex.B3, and reversed the judgment, which is perverse. Therefore, the substantial questions of law are answered in favour of the appellant and against the respondents. The judgment and decree of the appellate Court are set aside. The judgment and decree of the trial Court are confirmed, and the second appeal is allowed. However, there shall be no order as to costs.

09/07/2025

Index: Yes/No.
Speaking Order : Yes/No.
Neutral Citation Case : Yes/No.

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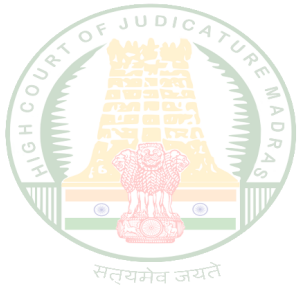


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To

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1. The III Additional Subordinate Judge,
Madurai.
2. The District Munsif Court, Madurai Taluk,
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P.VELMURUGAN, J.

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Judgment made in
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