



S.A.No.657 of 2008
and M.P No.1 of 2008

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.07.2026

CORAM:

THE HONOURABLE MR. JUSTICE P.DHANABAL

S.A.No.657 of 2008
and M.P. No.1 of 2008

Hamsa Ammal

... Appellant

VS

1. Sri Kanthiammal
2. Parathaswara Nainar
3. Duraisamy Nainar
4. Sugumar Nainar
5. Padmavathy
6. Appanraj
7. Kalaiselvi
8. Ashok Kumar

.... Respondents

(RR5 to 8 brought on record as LRs of the deceased R3 viz., Duraisamy Nainar vide Court order dated 21.04.2021 made in CMP Nos.22826, 22833 & 22841 of 2018)

Prayer: Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 25.02.2005 passed in A.S. No.72 of 1982, on the file of the Principal Subordinate Court, Tindivanam, upholding the decree and judgment dated 16.04.1982 passed in O.S.No.10 of 1978, on the file of the District Munsif Court, Tindivanam.



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For Appellant : Ms.V.Srimathi

For R2, R5 to R8 : Mr.S.Kaithamalai Kumaran
Senior Counsel

For R1 & R4 : Dismissed vide court order dated
15.03.2024

JUDGMENT

The second appeal has been preferred as against the judgment and decree dated 25.02.2005 passed by the Principal Subordinate Court, Tindivanam in A.S.No.72 of 1982, wherein the appellant herein filed the suit before the District Munsif Court, Tindivanam in OS No.10 of 1978 for the relief of declaration and permanent injunction and the same was dismissed by the trial court. Aggrieved by the said decree and judgment, the plaintiff in the main suit has preferred an appeal in AS No.72 of 1982. The appellate court also dismissed the suit. Aggrieved by the said decree and judgment, the present second appeal has been preferred by the appellant / plaintiff.



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2. For the sake of convenience, the parties are referred to as per their rank in the Trial Court and at appropriate places, their rank in the present second appeal would also be indicated.

3. The case of the plaintiff before the trial court is that originally the suit property belonged to one Chinnaamy Nainar and Duraisamy Nainar. The said Chinnaamy Nainar and Duraisamy Nainar partitioned their properties and thereafter, Duraisamy Nainar died 15 years back and Chinnaamy Nainar died 25 years back. Pursuant to the partition between Duraisamy Nainar and Chinnaamy Nainar, the suit property has been allotted to Duraisamy Nainar and he was in possession and enjoyment of the property. The said property has been shown as E,F,G,H in the plaint plan. Northern side portion was allotted to Chinnaamy Nainar and he was in possession and enjoyment of the property in the same street on the eastern side. On the southern side of Duraisamy Nainar, in the share of the Chinnaamy Nainar property, a common lane was in existence. The said lane was used by the both commonly. The said lane is 3½ feet. While



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so, the said Chinnasamy Nainar, on 23.03.1946, settled his property to his wife Chinnammal through settlement deed. The said Chinnammal also enjoyed the said lane as common lane. On 25.04.1960, the said Chinnammal and Duraisamy Nainar entered into an agreement. As per the said agreement the entire lane was given to Duraisamy Nainar for the above said lane property E, F, G, H portion North – South 11.3 feet East – West 136½ feet was allotted to Chinnammal. As per the above said agreement, the entire lane was allotted to the Duraisamy Nainar and C, D, E, F portion of property was allotted to Chinnammal. As per the above said agreement, both the parties enjoyed the properties. While so, the said Chinnammal died in the year 1976. Chinnammal had three daughters. They divided the properties. Thereafter, the suit properties shown in the plaint plan A, B, C, D was allotted to the share of the plaintiff, as such the plaintiff is entitled to the suit properties. There was a vacant site in front of the house of the plaintiff and the same was enjoyed by her as cattle shed. The properties of Duraisamy Nainar had been enjoyed by the defendants 1 and 2. The first defendant is the wife of



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Duraisamy Nainar, the second defendant is the daughter of Duraisamy Nainar, the third defendant is the husband of the second defendant and the defendants 4 & 5 are first defendant's sister's son. The defendants have no right, title or interest over the suit properties. The defendants 1 and 2 are enjoying the plaint plan C, D, H, G portion of the property. While so, on the southern side of the suit property in the C, D lines, the plaintiff attempted to raise a construction on 05.01.1978 and the same was restrained by the defendants and the defendants also proclaimed that they are going to encroach the property of the plaintiff. Therefore, the plaintiff filed the suit.

4. The case of the defendants before the trial court is that Chinnaamy Nainar and Duraisamy Nainar are brothers and they died about 15 years back respectively. There was a partition between Chinnaamy Nainar and Duraisamy Nainar through an unregistered partition deed dated 07.06.1934, an extent of the property measuring 49½ feet North to South and 136½ feet East to West. The northern side half



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share measuring $24\frac{3}{4}$ X $135\frac{1}{2}$ was allotted to the share of Chinnasamy Nainar and southern half share was allotted to Duraisamy Nainar. The allegations that Duraisamy Nainar was allotted $22\frac{1}{2}$ X $136\frac{1}{2}$ and Chinnasamy Nainar was allotted to 27 X $136\frac{1}{2}$ is false. Chinnamsamy Nainar has no access through the lane to his house and he could not have used the same as the northern wall of the Duraisamy Naniar's last to the eastern extent. The averments that Chinnasamy Nainar executed a settlement deed dated 23.03.1946 in respect of his entire property is denied. The said settlement deed is a concocted one. The allegation that Duraisamy Nainar and Chinnammal entered into an agreement on 24.05.1960 is false. Chinnammal had three daughters including the plaintiff and they are entitled to succeed the properties of Chinnasamy Nainar and they are also necessary parties to the suit. The suit is bad for non-joinder of necessary parties. The allegation that the plaintiff had put up thatched shed on the southern side of the suit property is false. The defendants 1 and 2 have been in enjoyment of Duraisamy Nainar's properties after his death. The other defendants are unnecessary parties to



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the suit. The plaintiff had never been in possession and enjoyment of the suit property. She never attempted to lay a foundation along the line CD. After filing of the suit, the plaintiff removed the brick wall which divided the vacant site and garden allotted to the share of Duraisamy Nainar. Duraisamy Nainar and his successors alone have been using the lane openly, continuously and without any interruption for more than the statutory period ousting the plaintiff and thereby prescribed title by ouster. Duraisamy Nainar never agreed to give 3 ½ feet X 136 ½ feet on northern side of his share and they never part with any extent much less 1¾ feet X 136½ feet of their share. As the defendants and their predecessor have been in enjoyment of 24¾ feet X 136½ feet on the southern side of the share, they have prescribed title by adverse possession. Already portion on the eastern side of the property brick wall was built. There was no partition between the daughters of Chinnammal and therefore the suit is liable to be dismissed.

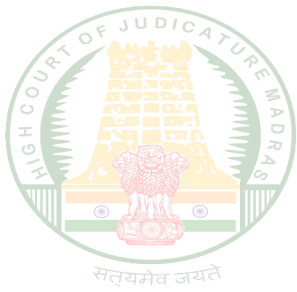


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5. Based on the above said pleadings and after hearing both sides and perusing the records, the Trial Court has framed the following issues

- "(i) Whether the plaintiff has got title to the suit property ?*
- (ii) Whether the partition pleaded in the written statement is true ?*
- (iii) Whether the partition pleaded by the defendant is true ?*
- (iv) Whether the alleged partition list is true and valid ?*
- (v) Whether the agreement dated 24.05.1960 is true and valid ?*
- (vi) Whether the settlement deed dated 23.03.1946 is true and valid*
- (vii) Whether the plaintiff has acquired prescriptive title to the suit properties ?*
- (viii) Whether the defendants have prescribed title to the southern 23 ¾ ' south to northern 136½ ' east to west ?*
- (ix) Whether the suit is bad for non-joinder of necessary parties ?*
- (x) To what relief is the plaintiff entitled ?"*



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6. In order to prove the case, before the Trial Court, on the side of plaintiff, PW1 and PW2 were examined and marked Ex.A1 to Ex.A5. On the side of the defendants, DW1 and DW2 were examined and marked Ex.B1. The Commissioner report and plan have been marked as Ex.C1 and Ex.C2

7. After analysing the evidence on both sides, the Trial Court dismissed the suit. Aggrieved by the said decree and judgment, the plaintiff has preferred an appeal in A.S.No.72 of 1982 before the Principal Subordinate Court, Tindivanam, on various grounds.

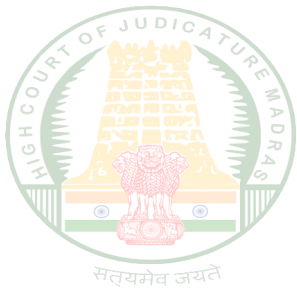
8. The First Appellate Court, after hearing both sides and perusing the records, framed the following point for determination :

(i) Whether the partition stated in the plaint is true ? (or)

Whether the partition stated in the written statement is true ?

(ii) Whether the agreement dated 24.05.1960 is true and valid ?

(iii) Whether the plaintiff is entitled for the relief of declaration and



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permanent injunction ?

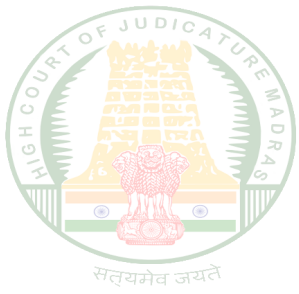
(iv) Whether the appeal is maintainable ?

(v) To what reliefs the plaintiff is entitled for ?

9. After hearing both sides and perusing the records, the First Appellate Court dismissed the appeal by confirming the decree and judgment of the Trial Court. Aggrieved by the said decree and judgment of the First Appellate Court, the present second appeal has been preferred by the appellant / plaintiff.

10. Heard Ms.V.Srimathi, learned counsel appearing for the appellant and Mr.S.Kaithamalai Kumaran, learned counsel appearing for the respondents 2, 5 to 8.

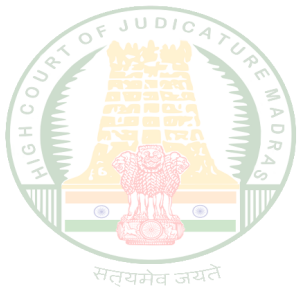
11. The learned counsel appearing for the appellant would submit that originally the appellant's father, Chinnasamy Nainar and the husband of the first respondent, Duraisamy Nainar were brothers. The said Duraisamy Nainar and Chinnasamy Nainar partitioned their properties.



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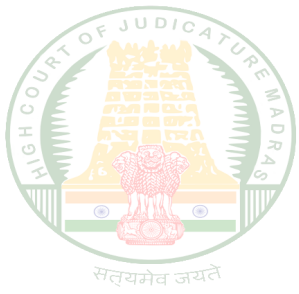
Pursuant to the partition, Duraisamy Nainar was allotted $22\frac{1}{2}$ ft x $136\frac{1}{2}$ ft and immediately to the northern side of the said property $3\frac{1}{2}$ ft width lane last retained for the common use for enjoyment. While so, on 23.03.1946, the said Chinnasamy Nainar executed a registered settlement deed in favour of his wife Chinnammal in respect of his property. The said Chinnammal also jointly enjoyed the above said $3\frac{1}{2}$ ft width property along with Duraisamy Nainar in accordance with their earlier family arrangements. Thereafter, for the convenient enjoyment, the said Chinnammal and Duraisamy Nainar entered into a Written Agreement dated 24.05.1960 by which Chinnammal relinquished her half share in the common lane to compensate that lane Duraisamy Nainar transferred the property to the Chinnammal to an extent of $1\frac{3}{4}$ ft X $136\frac{1}{2}$ ft from the northern portion of his holding. Thereby, Chinnammal entitled to $28\frac{3}{4}$ ft X $136\frac{1}{2}$ ft. Duraisamy Nainar retained only $22\frac{1}{2}$ ft X $136\frac{1}{2}$ ft. The said arrangement was subsequently confirmed by the said Duraisamy Nainar through his own registered Will (Ex.A4). Chinnammal died in the year of 1976 leaving behind her three daughters and they partitioned their mother



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estate. The suit property was allotted to the appellant, when she commenced construction of compound wall in the month of June 1978 the respondents interfered and attempted to encroach the property, thereby filed the suit. The trial court upheld the registered settlement deed dated 23.03.1946 executed by Chinnasamy Nainar in favour of Chinnammal. However, the Courts below failed to accord the legal consequences flowing from that finding and proceeded as though the appellant's title itself remained doubtful. The entire defence rested upon the plea that the partition of the suit property was divided into two i.e. $23\frac{3}{4} \times 136\frac{1}{2}$ each. The trial court expressly rejected the plea relying upon Ex.A4, but failed to consider Ex.A3 is genuine and acted upon. The Courts below drew an adverse inference merely because the earlier partition deed dated 07.06.1976 was not produced and failed to consider that the registered rectification deed was produced. The Courts below failed to examine possession in conjunction with documentary title. The concurrent findings of the Courts below are perverse and accepted the Ex.A4 the extent available to Duraisamy Nainar, but failed to consider the

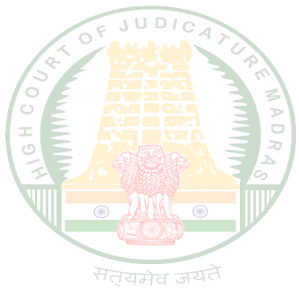


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ownership over the additional extent claimed by the appellant. Therefore, the Courts below committed an error in law rejecting Ex.A3 despite its execution having been proved in accordance with Section 68 of the Indian Evidence Act through the testimony of an attesting witness. The Courts below were not justified in rejecting the appellant's case after simultaneously disbelieving the respondents' principal plea that their predecessor owned $23\frac{3}{4}$ ft X $136\frac{1}{2}$ ft. Therefore omission to consider material admissions, warranting interference and the present second appeal is to be allowed.

12. The learned counsel appearing for the respondents would submit that originally the suit property belonged to one Duraisamy Nainar and Chinnaamy Nainar and they equally partitioned the properties. The total extent of the properties is $49\frac{1}{2}$ feet X $136\frac{1}{2}$ feet. The northern half share of $24\frac{3}{4}$ X $135\frac{1}{2}$ was allotted to Chinnaamy Nainar equally, the southern side half share was allotted to Duraisamy Nainar. There is no common lane as alleged in the plaint. The agreement dated 24.05.1960 is



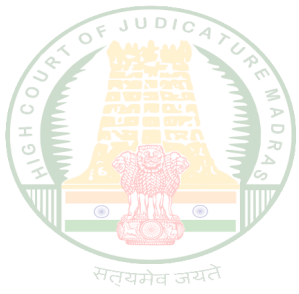
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denied by the defendants. Even assuming that the agreement is true, no property has been transferred through an agreement and it has to be transferred by way of registered instrument. No registered instrument executed between the parties. Therefore, the plaintiff has filed to prove his case and mere agreement is not sufficient and the said agreement is not acted upon. The plaintiff has failed to prove the existence of agreement. The Courts below have correctly appreciated the evidences and documents and through the agreement, title cannot be passed therefore correctly declined to grant relief to the appellant. There are no substantial question of law involved in this case and hence prayed to dismiss the second appeal.

13. This Court heard both sides and perused the records.

14. In this case, there is no dispute that originally the property belonged to predecessors of the plaintiff and the defendants. The total extent of the property is 49½ feet X 136½ feet. The same was divided

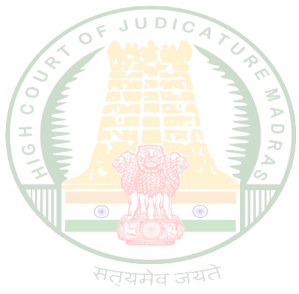


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between two parties, namely, Duraisamy Nainar and Chinnsamy Nainar.

The northern portion was allotted to Chinnsamy Nainar and the southern portion was allotted to Duraisamy Nainar. According to the plaintiff, Chinnsamy Nainar was allotted 27 feet X 136½ feet and 22½ feet X 136½ feet was allotted to Duraisamy Nainar and between the two properties 3½ feet lane was kept as common for both the parties. Thereafter, the property was settled to the wife of Chinnsamy Nainar, namely, Chinnammal and the legal heirs of Chinnammal had three daughters and they partitioned the properties. Prior to the partition, during the lifetime of Chinnammal the said Duraisamy Nainar and Chinnammal have entered into an agreement dated 25.04.1960. As per the agreement, 3½ feet lane was exclusively allotted to Duraisamy Nainar and Chinnammal had relinquished her right over the half share in the said common lane and in order to compensate that lane, Duraisamy Nainar had given an extent of 1¾ feet North to South and 136 feet East to West and in the partition also the said extent have been mentioned. The defendants denied the extent of share allotted to the parties. According to

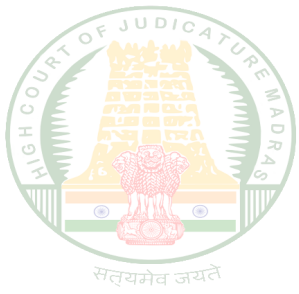


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the defendants, the property was equally divided by Chinnsamy Nainar and Duraisamy Nainar and no any agreement was entered between the parties as alleged by the plaintiff.

15. Before the Trial Court, the plaintiff was examined as PW1 and also examined the father of the plaintiff, Chinnasamy Nainar and marked Ex.A1 to Ex.A5. Ex.A1 is the registered settlement deed executed by Chinnasamy Nainar to Chinnammal; Ex.A2 is the original registered partition deed between the legal heirs of Chinnammal; Ex.A3 is the agreement executed between Duraisamy Nainar and Chinnammal; Ex.A4 is the copy of the registered Will dated 10.06.1971 executed by Duraisamy Nainar; Ex.A5 is the copy of the settlement deed executed by Duraisamy Nainar to Srikanth. On careful perusal of Ex.A1 / settlement deed executed to Chinnasamy Nainar to Chinnammal, it revealed that the property allotted to Chinnasamy Nainar was settled to his wife Chinnammal. The main contention raised by the plaintiff is that through Ex.A3 / Agreement dated 23.05.1960, the suit property has been

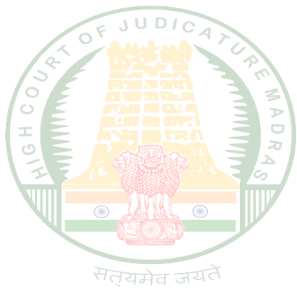


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conveyed to the plaintiff's father's predecessor. However the said Ex.A3 is not a registered document i.e. only an agreement. There is no any document executed between the parties in respect of exchange of the properties. As far as exchange of properties are concerned, the properties can be exchanged through the instrument in accordance with law. In the absence of any registered documents it cannot be said that through Ex.A3, the properties have been exchanged between the parties. The main claim of the appellant is based on the above said agreement and that agreement cannot be treated as exchange deed and through Ex.A3 no property can be exchanged. The Courts below have rightly appreciated the evidences according to law and rendered concurrent findings. There is no substantial question of law involved in this case. The learned counsel for the appellant have raised the following substantial questions law :

- a) *“Whether the Courts below are justified in dismissing the suit, when the appellant is in occupation and enjoyment of the suit properties from the year 1960 ?*

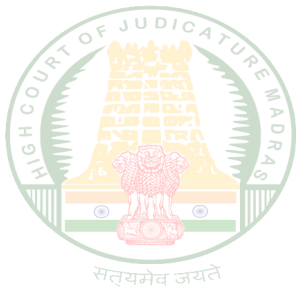


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- b) *Whether the signatures under Ex.A3 and Ex.A4 are not disputed by any of the parties, Whether the Courts below are right in overlooking it?*
- c) *Whether the Courts below are justified in dismissing the suit after concluding that the partition set out in the plaint is true and correct ?*
- d) *Whether the Courts below are justified in concluding that none of the attestor and scribe was examined, when PW2, Chinnathambi Nainar was examined in court?"*

On careful perusal of the documents and above said substantial questions of law raised by the appellant there is no substantial question of law involved in this case and thereby there is no scope to interfere with the concurrent findings of the Courts below and there are no illegality or perversity in the judgments rendered by the Courts below. Therefore, the second appeal has no merits, accordingly, dismissed.



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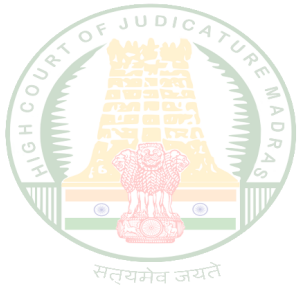
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16. In the result,

- i. the Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.
- ii. the decree and judgment dated 25.02.2005 passed in A.S. No.72 of 1982, on the file of the Principal Subordinate Court, Tindivanam, and the decree and judgment dated 16.04.1982 passed in O.S.No.10 of 1978, on the file of the District Munsif Court, Tindivanam, are upheld.

09.07.2026

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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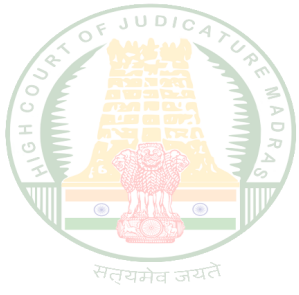
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To

1. The Principal Subordinate Court, Tindivanam.
2. The District Munsif Court, Tindivanam.
3. The Section Officer, VR Section, High Court, Madras.



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