



THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on : 17.12.2025

Judgment pronounced on : 13.02.2026

CORAM

THE HON'BLE MR. JUSTICE P.B.BALAJI

A.S.No.100 of 2024
& CMP.No.3325 of 2024

1.Meenakshi
2.Selvi
3.Mani @ Chellamuthu

..Appellants

Vs.

1.Vasanthi @ Vasantha Devi
2.Anandakumar

..Respondents

Prayer: Appeal Suit filed under Section 96 of the Code of Civil Procedure, to set aside the judgment and decree dated 19.10.2023 in O.S.No.378 of 2020 on the file of the Additional District-cum-Sessions Court No.3, Dharapuram, in so far as it relates to suit 'A' Schedule property is concerned.

For Appellants : Mr.K.Govi Ganesan

For Respondents : Mr.P.Navaneethakrishnan

JUDGMENT

The defendants in a suit for partition are the appellants in this appeal suit.

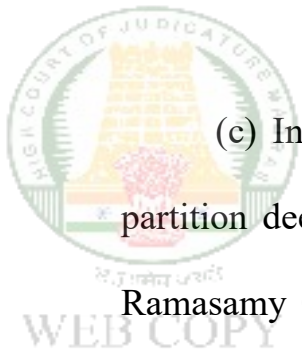


2.Pleadings:

The plaint in brief:

(a) The suit properties were held in common by the sons of late Ramasamy Gounder, namely Palanisamy Gounder, Kumarasamy and Muthusamy. Subsequently, in and by a partition before the Panchayat on 17.02.1972, the properties have been divided and a deed has also been registered in Doc.No.266/1972. Schedule A was allotted to Palanisamy Gounder and B Schedule property was allotted to Muthusamy under the said partition deed and they have taken possession of their respective allotments and have in separate possession and enjoyment of the same.

(b) Palanisamy Gounder, in and by a registered power of attorney dated 05.12.2007, has appointed one K.Somasundaram as his duly constituted agent, pursuant to which, the said K.Somasundaram executed a sale deed on 06.02.2009 in favour of the 1st plaintiff for a consideration of Rs.3 lakhs. The 1st plaintiff has taken possession of A Schedule property and has been in absolute possession and enjoyment of the same ever since. Palanisamy Gounder died in the year 2014. His wife, the 1st defendant and the daughter, the 2nd defendant and the son-in-law, the 3rd defendant, despite the alienation made by the Palanisamy Gounder even during his lifetime, suppressing the same, attempted to alienate the property belonging to the 1st plaintiff. The attempts to meddle with the rights of the plaintiffs were thwarted by the plaintiffs.



(c) In so far as B Schedule property, which is described as Schedule C partition deed dated 17.02.1972, the allottee of the suit Schedule B property, namely Ramasamy Gounder's son Muthusamy, in and by a settlement deed dated 10.02.1997 settled it on the plaintiffs 1 and 2. The 2nd plaintiff was a minor, represented by his mother, as natural guardian, on the date of the settlement deed. The registered settlement deed has been acted upon and the plaintiffs are in absolute possession and enjoyment of the Schedule B property as well. Even in respect of Schedule B property, the defendants attempted to interfere with the right and interest of the plaintiffs. Hence, the plaintiffs seek for the relief of declaration that they are the rightful owners of the suit properties and for a permanent injunction to restrain the defendants from interfering with their peaceful possession and enjoyment.

3. Written Statement of the defendants in brief:

The plaintiffs are not entitled to the relief of declaration and permanent injunction. The fact that the property belong to Palanisamy Gounder is not disputed. However, it is denied that Palanisamy Gounder executed a power of attorney. It is contended by the defendants that subsequent to the demise of Palanisamy Gounder, his wife and daughter being defendants 1 and 2 are entitled to 50% each and in fact, in an oral family arrangement, the daughter has given up her right in favour of the mother, the 1st defendant. The defendants plead ignorance of the alleged power of attorney executed by Palanisamy Gounder in favour of K.Somasundaram. The deceased Palanisamy did not



have any right to execute the power of attorney in respect of the entire property in which the 2nd defendant, daughter had 50% right, A Schedule property being ancestral property and any such alienation was therefore not valid in the eye of law. The 2nd defendant has also filed a suit for partition in O.S.No.191 of 2020 and the same is pending. The defendants 1 and 2 are not concerned with B Schedule property. Therefore, the defendants seek dismissal of the suit.

4. Issues framed by the trial Court:

Based on the pleadings, the trial Court has framed the following issues:

1. தாவா “A” செட்டியூல் சொத்து 06.02.2009 ம் தேதியிட்ட கிரைய ஆவணப்படி 1ம் வாதிக்கு பாத்தியப்பட்டு அனுபவித்து வருகிறாரா?
2. தாவா “B” செட்டியூல் சொத்து வாதிகளுக்கு 10.02.1997 தேதியிட்ட செட்டில்மெண்ட் ஆவணப்படி உரிமை பாத்தியம் உடையதா?
3. தாவா “A” செட்டியூல் சொத்தில் 2ம் பிரதிவாதிக்கு வாரிகரிமை சட்டப்படி சரிபாதி பாக உரிமை இருக்கிறதா?
4. வழக்கிற்கு 1 மற்றும் 3 பிரதிவாதிகள் அவசியமற்ற தரப்பினர் என்பது சரியா?
5. வாதிகள் தாவாவில் கோரியவாறு உரிமை விளம்புகை மற்றும் நிரந்தர உறுத்துக்கட்டளை பரிகாரம் பெற உரிமை இருக்கிறதா?
6. வாதிகளுக்கு கிடைக்கும் பரிகாரம் என்ன?



5.Trial:

Before the trial Court, on the side of the plaintiffs, the 1st plaintiff examined herself as P.W.1 and one Periasamy was examined as P.W.2 and Ex.A1 to Ex.A14 were marked and on the side of the defendants, the 2nd defendant Selvi examined herself as D.W.1 and Ex.B1 to Ex.B9 were marked.

6.Decision of the trial Court:

The trial Court partly decreed the suit, granting the relief of declaration that the 1st plaintiff is entitled to A Schedule property and for consequential injunction. In respect of B Schedule property, the trial Court dismissed the suit.

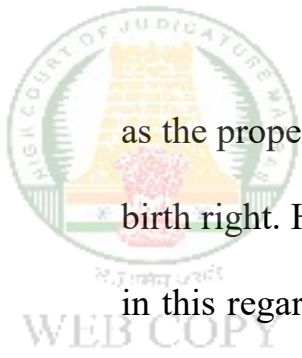
7.Present appeal:

Aggrieved by the decree granted in respect of Schedule A property, the present appeal has been filed.

8.I have heard Mr.K.Govi Ganesan, learned counsel for the appellants and Mr.P.Navaneethakrishnan, learned counsel for the respondents.

9.Arguments of the learned counsel for the appellants:

(a) Mr.K.Govi Ganesan, learned counsel appearing for the appellants would contend that the father of the 2nd defendant had no right to deal with the entire property,



as the property was an ancestral property in which the 2nd defendant, daughter acquired a birth right. He would also take me through the admissions of P.W.1 in cross examination in this regard. He would further attack the findings of the trial Court with regard to the nature and character of the property and discussions and findings in this connection. The learned counsel for appellants would further contend that the trial Court did not even consider the fact that the 2nd defendant had filed a suit for partition in O.S.No.191 of 2020 against the 1st plaintiff and being a co-owner of Schedule A property, the Court ought not to have granted the relief of injunction.

(b) Even with regard to the relief of declaration, it is the contention of the learned counsel for the appellants that the alienation made by the father of the 2nd defendant without her consent and knowledge, after coming into force of the Amendment Act 39 of 2005 was clearly not binding on the 2nd defendant. He would therefore pray for the appeal suit being allowed.

10.Arguments of the learned counsel for the respondents:

(a) Per contra, Mr.P.Navaneethakrishnan, learned counsel appearing for the respondents would contend that admittedly, the suit Schedule A property was allotted to the share of Palanisamy Gounder, one of the sons of Ramasamy Gounder in and by a registered partition deed dated 17.02.1972 and ever since Palanisamy Gounder had treated the property as his separate property. It was in fact subdivided and mutated in his



name in Survey No.404/A1. The learned counsel for the respondents, drawing my attention to the evidence of D.W.1, the 2nd defendant, would submit that the 2nd defendant had candidly admitted to the fact that her father was enjoying A Schedule property as his independent property. He would also point out to the admission of P.W.1 that she, being the daughter of Palanisamy Gounder under Ex.B3, settlement deed dated 06.11.1987, benefited an extent of 2 acres under the registered settlement deed and that the property that been settled on the 2nd defendant was the property, which fell to the share of Palanisamy Gounder under the partition deed dated 17.02.1972.

(b) The learned counsel for the respondents would further state that merely because the appellants were ignorant of Palanisamy Gounder having executed and registered the power of attorney and the said power of attorney agent subsequently alienating the property in favour of the 1st plaintiff cannot be a ground to challenge the valid bonafide purchase for consideration made by the 1st plaintiff. He would also state that the 1st plaintiff purchased the property under Ex.A1 way back in 06.02.2009 and the suit itself came to be filed for partition in O.S.No.191 of 2020, the plaint of which was also marked as Ex.A7, after a lapse of 11 long years. He would therefore state that when no claim was made by Palanisamy Gounder during his lifetime or by the defendants themselves either claiming partition, especially the 2nd defendant claiming it as being ancestral property or by the defendants 1 and 2 on the ground that the alienation was bad



and invalid in law during the lifetime of Palanisamy Gounder, the trial Court's findings are in order.

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(c) The learned counsel for the respondents would therefore state that the claim was clearly not only belated, but also fanciful and arbitrary. He would therefore state that the trial Court has rightly factored the oral and documentary evidence in decreeing the suit in respect of the Schedule A property. He would fairly concede that in so far as the denial of relief in so far as Schedule B property, the plaintiffs have accepted the verdict and have not chosen to prefer any appeal. He would therefore pray for dismissal of the appeal suit.

11.I have carefully considered the submissions advanced by the learned counsel on either side. I have gone through the pleadings, oral and documentary evidence available on record and also the judgment of the trial Court.

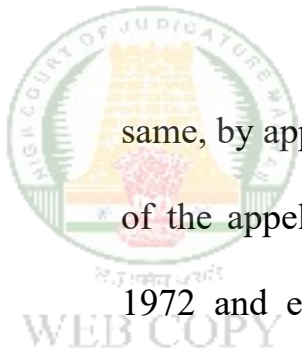
12.Upon consideration of the above submissions, I frame the following point for consideration:

1.Whether the 2nd defendant is entitled to half share in Schedule A property and if so, whether the alienation made by Palanisamy Gounder, father of the 2nd defendant during his lifetime is valid and binding on the 2nd defendant?



13.The relationship between the parties is not in dispute. The fact that the 1st plaintiff has purchased Schedule A property from the power of attorney agent of Palanisamy Gounder has also been established before the trial Court. No doubt, the defendants took a plea that they were not aware of the execution of the power of attorney by Palanisamy Gounder, husband and father respectively of the defendants 1 and 2 and the subsequent alienation made by the power of attorney in favour of the 1st plaintiff. However, by producing sufficient and satisfactory oral and documentary evidence before the trial Court, the plaintiffs have established the factum of Palanisamy Gounder having executed a registered power of attorney in favour of K.Somasundaram, based on which, the 1st plaintiff has purchased A Schedule property. The 1st plaintiff has also produced revenue records to establish mutation of revenue records in her name, post purchase, under the sale deed executed by the power of attorney agent. The power of attorney is a registered power of attorney and the sale deed is also a registered conveyance instrument for consideration. The defendants have not chosen to challenge the said power of attorney or the subsequent sale deed in favour of the 1st plaintiff. In fact, during the course of arguments, it has also been brought to my notice by the learned counsel for the respondents that even the suit for partition in O.S.No.191 of 2020 filed by the 2nd defendant was dismissed for non-prosecution on 13.03.2025.

14.Though it is the contention of the defendants that the property is an ancestral property and by birth, the 2nd defendant, daughter becomes entitled to 50% share in the



same, by applying the Amendment Act 39 of 2005, I do not find force in the submissions of the appellants. The property was admittedly subject matter of partition in the year 1972 and ever since the registered partition deed, allotting Schedule A property to Palanisamy Gounder, he has been in absolute possession and enjoyment of the same in his own right and mutation of revenue records were also in his name and subsequent to the sale to the 1st plaintiff, the 1st plaintiff has mutated revenue records in her name as well.

15. In fact, the 2nd defendant, while being cross examined, has admitted to the fact that her father was enjoying the property in his own right independently. Further, the 2nd defendant admits that a portion of the property measuring an extent of about 2 acres which was forming part of the property originally allotted to her father, Palanisamy Gounder under the very same partition deed dated 17.02.1972, was settled on her by her father, Palanisamy Gounder. The said settlement deed has been accepted and acted upon. Thus, it does not lie in the mouth of the 2nd defendant to contend that the property is not the absolute property of Palanisamy Gounder, her father, but it was being held by him as Karta of a minor Hindu undivided family and that the 2nd defendant had 50% share in the same.

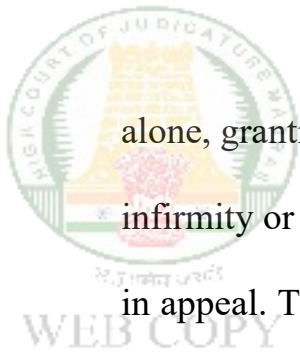
16. Once the 2nd defendant has taken benefit under the settlement deed in which Palanisamy Gounder has categorically asserted his absolute right, title and interest over



the Schedule A property, the 2nd defendant cannot take an inconsistent stand and contend that the suit properties are not the absolute properties of her father, Palanisamy Gounder.

In fact, I find from Ex.B4 dated 05.10.2006 that late Palanisamy Gounder had dealt with the property, which came to be allotted to him, as his independent and separate property. The said alienation by the father has also not been challenged by the 2nd defendant. In fact, as already discussed under Ex.B3, the 2nd defendant herself has accepted a gift settlement deed of an extent of 2 acres from her father, which confirms that the 2nd defendant has accepted the entitlement of her father to Schedule A property absolutely. Even the suit filed for partition against the 1st plaintiff in O.S.No.191 of 2020 has been dismissed. The very fact that the 2nd defendant has chosen to sue for partition alone further confirms the fact that the defendants have accepted the power of attorney and sale deed ultimately executed in favour of the 1st plaintiff either in the earlier suit in O.S.No.191 of 2020 or subsequently the defendants have not chosen to question or challenge the said power of attorney or the sale deed in favour of the 1st plaintiff. In the light of the above, I do not see how the plaintiffs are disentitled to a decree of declaration of Schedule A property.

17. Even in so far as the relief of permanent injunction, the 1st plaintiff has established, by production of revenue records, that the Schedule A property was mutated in her name, subsequent to her purchase through the power agent of Palanisamy Gounder. The trial Court has rightly decreed the suit in respect of Schedule A property



alone, granting the relief of declaration, as well as permanent injunction. I do not see any infirmity or illegality in the findings arrived at by the trial Court, warranting interference in appeal. The point for consideration is answered against the appellant and in favour of the respondents.

18.Result:

In fine, the Appeal Suit is dismissed. However, there shall be no order as to costs.

Connected Civil Miscellaneous Petition is closed.

13.02.2026

Neutral Citation Case : Yes / No
Speaking / Non-speaking order
Index : Yes/No
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The Additional District-cum-Sessions Court No.3, Dharapuram.



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P.B.BALAJI.J.

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Pre-delivery judgment made in
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