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A.S.No.213 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2026

CORAM

THE HONOURABLE MR.JUSTICE C.V. KARTHIKEYAN

AND

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

A.S.No.213 of 2021

1. Natarajan
2. Mathivanan
3. Karthikeyan

... Appellants

VS

Umamageswari
Wife of Buvaaneswaran
No.42, 1st Cross Street
Venkateswara Nagar West, Puducherry
Rep. By her Power Agent Lalitha
Wife of Perumal
No.193, Kamaraj Street
Pillaithottam
Puducherry – 605 013

... Respondent

Prayer: Appeal filed under Section 96 read with Order XLI Rule 1 of Code of Civil Procedure to set aside the judgment and decree dated 24.09.2019 in O.S.No.94 of 2013 on the file of learned II Additional District Judge, Puducherry.

For Appellants : Mr.N.Ramesh

For Respondent : No Appearance



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JUDGMENT

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[Judgment of the Court was delivered by **C.V. KARTHIKEYAN, J**]

The defendants, who are aggrieved by the judgment and decree in O.S.No.94 of 2013 dated 24.09.2019 of the II Additional District Judge, Puducherry are the appellants herein.

2. The suit in O.S.No.94 of 2013 had been filed by the respondent Umamageswari seeking a preliminary decree for partition of 2/3rd share in the suit schedule property, which included Item No.1 and Item No.2 and for consequential relief of appointment of Advocate Commissioner to divide the property and for costs of the suit. By the judgment dated 24.09.2019, the suit was decreed. Appellants 2 and 3 herein had filed Review Petition No.1 of 2020 seeking review of the said judgment, that came to be dismissed on 20.01.2020.

3. In the plaint, the plaintiff contended that suit property initially belonged to one Porkilai Ammal, who had a son by name Ponnuranga Naicker. Ponnuranga Naicker died leaving behind three sons viz., Perumal, Rathinam and Natarajan. Perumal died on 01.09.1995. Rathinam, Natarajan, Lalitha, wife of Perumal and Iyappan, son of Perumal filed O.S.No.1618 of 2006 before the Principal District Munsif, Puducherry and



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obtained a declaration that they are the legal heirs of deceased Ponnuranga Naicker. It must also be mentioned here that the legal heirs of Perumal viz., his wife Lalitha, son Iyyappan and two other daughters viz., Umamageswari and Sathyaprabha had filed a suit in O.S.No.1563 of 2012 before the II Additional District Munsif, Puducherry seeking to declare themselves as legal heirs of Perumal. The said suit was decreed. It is the case of the plaintiff that her mother Lalitha, the power agent herein, Iyappan, her brother and Rathinam, son of Ponnuranga Naicker sold their 2/3rd undivided share to the plaintiff Umamageswari by a registered sale deed dated 03.01.2013. On the strength of such sale deed, the plaintiff had sought a preliminary decree for partition of 2/3rd undivided share in the suit property.

4. The learned counsel for appellants / defendants in the suit stated that the appellants had no objection for the devolution of 2/3rd share with respect to Item No.2 of the property and the dispute is only with respect to Item No.1 of the property.

5. The property in respect of Item No.1 over which there is a dispute, which has to be now decided in the appeal, measures 388 sq.ft. The respondent/plaintiff claims 2/3rd share, namely 258.6 sq.ft. This particular



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property, as stated earlier, originally belonged to Ponnuranga Naicker and his brother's grandson Punniyakodi Naicker. It originally comprised of a total extent of 5896 sq.ft. The second and third appellants have purchased the entire extent of the property by way of the following documents:

(i) Ex.B1-Sale deed dated 22.12.1988 executed by Punniakoti and others and also the legal heirs of Ponnurangam and others for an extent of 1829 sq.ft;

(ii) Ex.B2-Sale deed dated 20.11.1989 executed by Rathinam for an extent of 304 sq.ft, which is 1/5th share of 1520 sq.ft;

(iii) Ex.B3- Relinquishment deed dated 30.11.1989 executed by legal heirs of Punniakoti and others and also the legal heirs of Ponnurangam and others for a consideration of Rs.40,000/- for 1216 sq.ft which is 4/5th share out of 1520 sq.ft;

(iv) Ex.B4-Sale deed dated 31.03.2000 executed by legal heirs of Punniakoti and others and legal heirs of Ponnurangam and others for an extent of 2668 sq.ft.



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6. The appellants, who were the defendants, therefore claimed absolute right over Item No.1 of the suit schedule property and claimed that the right of the respondent herein was restricted only to 2/3rd share in Item No.2 of the property and that she cannot claim any right or title over the Item No.1 of the property.

7. During trial with respect to the interpretation of the documents mentioned above, particularly Exs.B2 and B3, the following issues were framed apart from the other issues:

i) Whether the plaintiff is entitled to 2/3rd share in the suit property?

ii) Whether the defendant was entitled for the relief of partition in the suit property as prayed in the counter claim?

8. During the trial, the plaintiff examined herself as PW1 and the second defendant examined himself as DW1. A Deputy Surveyor was examined as DW2. The plaintiff marked Exs.A1 to A7 and the defendants marked Exs.B1 to B18. The authorization letter of DW2 was marked as Ex.X1.



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9. While deciding whether the properties are divisible and whether the plaintiff has any share in the 1st item of suit property, learned trial Judge had examined Exs.B2 and B3 and came to a conclusion that Ex.B2 sale deed dated 20.11.1989 was confirmed by the relinquishment deed (Ex.B3) dated 30.11.1989 and held that though the documents relate to the same property, they were not distinct documents and did not relate to separate and distinct properties.

10. In view of that particular finding, holding that the residual shares have not devolved on the defendants, the learned trial Judge held that the plaintiff therein, who is the respondent herein, was also entitled to a share in that residual portion. Challenging that particular finding, the present appeal has been filed.

11. In the appeal, notice was directed to the respondent/plaintiff. Notice has been served. However, there is no appearance on her behalf. Her name and address have also been printed in the cause list. Even during the hearing, there is no representation.

12. Since the entire issue depends on interpretation of the two documents (Ex.B2 and Ex.B3) and the respondent has taken a conscious



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decision not to appear before the Court, we find no reason to withhold ourselves from proceeding further in the matter.

13. The only point for consideration in the appeal is, whether Ex.B2-Sale Deed and Ex.B3-Relinquishment Deed are distinct and separate documents relating to two separate transactions and two separate portions of the property or whether they relate to one particular transaction and one property.

14. The learned counsel for the appellants took this Court through the recitals in Ex.B2, which was the sale deed executed by Rathinam in favour of 2nd and 3rd appellants herein. Learned counsel pointed out that this particular document was marked during the cross-examination of PW1. Learned counsel then pointed out that Ex.B3, which was the relinquishment deed for a consideration of Rs.40,000/- was also marked during the cross-examination of PW1 and submitted that both the documents relate to separate portions of the undivided property and Ex.B3 can never be termed as confirmation of the sale in Ex.B2. The learned trial Judge, however, held that subsequent to the sale under Ex.B2, no new extent of property was covered under Ex.B3-Relinquishment Deed and therefore, held that no



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additional property was relinquished in favour of 2nd and 3rd defendants

therein/ 2nd and 3rd appellants herein.

15. A careful perusal of Ex.B3-Relinquishment Deed would reveal that the finding of the learned trial Judge necessarily has to be interfered with. The relevant recitals in Ex.B3 are as follows:

“.... ஏற்கனவே தாங்கள் 20-11-2989-ல் எழுதி புதுவைப் பதிவுகத்தில் பதிவு, செய்யப்பட்ட ஒரு கிரய பத்திரப்படி எங்கள் பங்காளி காலஞ்சென்ற பொன்னுரங்கநாயக்கரின் குமாரர் ரத்தினம் என்பவரிடமிருந்து கீழ்க்கண்ட சொத்தில் பொதுவில் அவருக்குக் கட்டுப்பட்ட 304 ச.அடி மனையும், அதிலிலுள்ள பாகத்திற்கு கட்டுப்பட்ட சிமெண்ட் ஒரு போட்ட கட்டிடத்தையும் தாங்கள் கிரயம் வாங்கியவகையில் பொதுவில் தங்களுக்கு கு சொந்தம்.

நமக்குள் கீழ்க்கண்ட சொத்தை பொதுவில் அனுபவிப்பதில் சிரமம் உள்ளதாலும், தாங்களும் பாகஸ்தர் களாக இருப்பதாலும் இச்சொத்தில் எங்கள் அனைவர்கட்கும் பொதுவில் கட்டுப்பட்ட பாக சொத்தை நாங்கள் தங்கள் இருவர்களிடமிருந்து பிரதி பலனாக ரூபாய் 400000 ∴ நாற்பதாயிரம் கீழ்க்கண்ட சாட்சிகள் முன்னிலையில் பெற்றுக்கொண்டு தங்களுக்கு சொத்து பாக பாத்ய விடுதலை அளிக்கிறோம்.

சொத்து விபரம்

புதுவை ரி.டி. மேற்படி சப ` ரி.டி. புதுவை முனிசிப்பாலிடையைச் சேர்ந்த முதலியார் பேட்டைக்கொம்முயன் கிராம நெ.37 புதுப்பாளையம் ரெவின்யூ கிராமம், பிள்ளைத்தோட்டம், காமராஜ் சாலை உட்பகுதியில்



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முனிசிப்பல் ரோடிற்கு (வ),
நடேசன், பெருமாள், கோபால்சாமி
இவர்கள் வீட்டிற்கும் தோட்டத்திற்கும் (தெ).

விருதலை பெறுபவர்கள்
வீட்டிற்கும் தோட்டத்திற்கும் (மே)
சாரதாம்பாள் வகையறா மனைக்கு (கி)

இதற்குட்பட்ட கி.மே, தென்புறம் 30 (முப்பது) அடி,
வடபுறம் 32½ (முப்பத்திரண்டரை) அடி
தெ.வ, கீழ்புறம் 44(நாற்பத்து நான்கு) அடி
மேல்புறம் 54½ (ஐம்பத்து நாலரை) அடி

அளவுள்ள மனையும் அதிலடங்கிய பழைய சிமெண்ட் ஓடு
போட்ட கட்டிடம் ஆகியவற்றில் எங்களுக்கு
பொதுவில் கட்டுப்பட்ட 1520 (ஆயிரத்து ஐநூற்று இருபது)
ச.அடி பரப்பளவுள்ள பிரிபடாத பாக மனையும், அந்த
பாகத்திற்குட்பட்ட பழைய சிமெண்ட் ஓடு போட்ட
கல் கட்டிடமும் இந்த பாக பாத்திய
விருதலைப்பத்திரத்திற்குரியது.

16. It is seen that when a property of an extent of 4/5th share of 1520
sq.ft (=1216) has been transferred with specific boundaries, it is incorrect to
state that

**“no such new extent of the property not covered under E.B2
was released in favour of the defendants 2 and 3.” ”**



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17. Under Ex.B2 a specific area of 304 sq.ft had been sold, which was 1/5th undivided share of a larger area of 1520 sq.ft. Under Ex.B3-Relinquishment Deed, the reminder portion of 1216 sq.ft, which was undivided 4/5th portion of the larger area of 1520 sq.ft had been relinquished in favour of 2nd and 3rd appellants. Since the two areas under the Sale Deed and under the Relinquishment Deed were part of a larger area, the boundaries were the same, but they were distinct and separate properties and separate consideration was paid under the sale deed and under the relinquishment deed. These documents have not been challenged or disputed by the respondent / plaintiff. She has admitted to the said documents, which are registered documents. They were marked only during her cross-examination. Therefore, we hold that the learned trial Judge had come to an erroneous conclusion in holding that Ex.B3 is only a confirmation of the earlier document Ex.B2. We again reiterate that they are two different documents relating to two different transactions and adequate, separate consideration was paid for the different areas of undivided share of the property.

18. In view of these reasons, we hold that Exs.B2 and B3 are two



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separate and distinct documents creating separate right to the 2nd and 3rd

appellants with respect to the property described in the suit. In view of this fact, appellants 2 and 3/defendants 2 and 3 would become absolute owners of Item No.1 of the property and the respondent cannot claim any share in the same.

19. Accordingly, this appeal is partly allowed. The judgment and decree of the trial Court dated 24.09.2019 in O.S.No.94 of 2013 is set aside insofar as Item No.1 of the suit property is concerned. Insofar as the Item 2 is concerned, the judgment and decree of the trial Court is confirmed. Consequently, the counter claim filed by the appellants herein stands allowed with respect to Item No.1. There shall be no order as to costs.

[C.V.K., J] [K.R.S., J]
17.03.2026

Index: Yes/No
Neutral citation: Yes/No
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C.V. KARTHIKEYAN, J
and
K.RAJASEKAR, J

gpa

To

1. II Additional District Judge
Puducherry
2. The Section Officer
ER Section
Madras High Court

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