



SA No. 436 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06-08-2026

CORAM

THE HON'BLE MR.JUSTICE P. DHANABAL

**SA No. 436 of 2016 &
C.M.P.No.7483 of 2016**

1. P.N.Vidhyasagar (died)
S/o. Late Narayanan
2. Santhi
W/o Late P.N. Vidhyasagar
3. Madhushankar
S/o Late P.N. Vidhyasagar
4. Purushothaman
S/o Late P.N. Vidhyasagar
5. Dhanraj
S/o Late P.N. Vidhyasagar

[Sole appellant died, Appellants 2 to 5 are brought on record as legal heirs of the deceased sole appellant vide court order dated 26/06/2025 made in CMP.No.17774 of 2022 in SA.No.436 of 2016 (kbj)]

..Appellant(s)

Vs

1. Athmaram [died]
S/o. S. Narayanan
2. Savithiribai,
W/o. Late Ananda Rao,



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3. Suguna Athmaram
W/o Late Athmaram,
4. A.Vasudev
S/o Late Athmaram,
5. A.Karthick
S/o Late Athmaram
6. Harish
S/o Late Athmaram

..Respondent(s)

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code to set aside the Judgment and Decree of the learned Principal District Judge, Krishnagiri dated 04.01.2016 in A.S.No.17 of 2015 confirming the Judgment and Decree of the learned Subordinate Judge, Uthangarai dated 26.11.2014 in O.S.No.81 of 2014.

For Appellant(s): Mr.V.Nicholas

For Respondent(s): Ms.S.Rajakumari

J U D G M E N T

This Second Appeal has been preferred as against the Decree and Judgment passed by the learned Principal District Judge, Krishnagiri in A.S.No.17 of 2015 dated 04.01.2016. The appellant, who is the plaintiff



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has filed the suit for partition and separate possession in O.S.No.81 of 2014 on the file of Sub Court, Uthangarai and the same was dismissed on 26.11.2014. Aggrieved by the said Decree and Judgment, the plaintiff has preferred an Appeal Suit in A.S.No.17 of 2015 on the file of the learned Principal District Judge, Krishnagiri and the same was also dismissed on 04.01.2016. As against the said Decree and Judgment passed by the First Appellate Court, the present Second Appeal has been preferred by the plaintiff.

2. For the sake of convenience and brevity, the parties herein are referred as plaintiff and defendants, as referred before the trial court.

3. The case of the plaintiff before the trial court is that the plaintiff and the 1st defendant are sons of one Narayanan. The said Narayanan and one Nandhuramaiyah are brothers and they owned ancestral properties. The suit 'A' schedule property are the joint family properties. The said Narayanan died in the year 1946 and the said Narayanan had common share in the joint family properties. After the demise of Narayanan, the plaintiff and the 1st defendant, inherited the common



share and the said Nandhuramaiah, plaintiff and the 1st defendant are in possession and enjoyment of the property. On 11.11.1948, partition was effected between Nandhuramaiah and plaintiff and the 1st defendant, in the said partition deed, the properties are described as 'B' Schedule which have been allotted to the plaintiff and 1st defendant. The said properties are described as suit 'A' schedule properties. Thereafter, from the income of 'A' schedule properties as well as by borrowing money from Jaganathan and Narayanan, an extent of 1.90 acres in S.F.No.922 was purchased in the name of the plaintiff through sale deed dated 19.11.1973 and the plaintiff and the 1st defendant have been in joint possession and enjoyment of the suit property.

3.1. The plaintiff was not able to discharge the said debt and the said Narayanan, Jaganathan were making arrangements to knock away the said property, therefore, the 1st defendant, suggested to the plaintiff to execute sale deed in his favour. Therefore, the plaintiff executed a nominal sale deed dated 19.12.1983 in favour of the 1st defendant in respect of said 1.90 acres. However, the property was under joint enjoyment of the plaintiff and 1st defendant. The said property has been



described as 'B' Schedule in the suit. Further, from the surplus income, derived through suit 'A' and 'B' schedule properties and from the income of the plaintiff and 1st defendant, the 'C' schedule properties were purchased for the hindu joint family of the plaintiff and 1st defendant, but the sale deed dated 27.08.1988 was obtained in the name of 1st defendant. Thereafter, the plaintiff and the 1st defendant have been in joint possession and enjoyment of the properties. The 1st defendant was working in co-operative department and the plaintiff alone doing agricultural work.

3.2. The plaintiff developed the land through his own earnings and also installed 3 HP electric motor HP pump in the Well situated in S.F.No.622/1 and 5 HP electric motor in Well situated in S.F.No.619 and also borrowed money from one Ramasamy and conditional sale deed was executed in respect of one acre in S.F.No.621, another one acre in S.F.No.622/1B and $\frac{1}{4}$ share in the Well and electric motor pumpset on 09.02.2000 for the urgent need of money the plaintiff and his sons had executed sale deed in favour of the said Ramasamy as security for the loan amount of Rs.1,00,000/-, but the possession was with the plaintiff.



Now, due to misunderstanding between the plaintiff and the 1st defendant, the 1st defendant is claiming exclusive right over the properties covered under sale deed dated 27.08.1988 and also he created sale deed dated 11.02.2005, in favour of one Savithribai and her daughter, one Latha, thereafter, the 1st defendant filed a suit in O.S.No.68 of 2005 on the file of the learned District Munsif, Pochampalli with false averments, therefore, the plaintiff called upon the 1st defendant for amicable partition on 06.03.2006, but the 1st defendant falsely claimed that as if the partition was already effected and the pattas are also transferred. In fact, the 1st defendant without any knowledge of the plaintiff obtained transfer of patta in respect of some suit properties and the same are not valid and binding on the plaintiff, therefore, the plaintiff filed the suit for partition.

4. The case of the 1st defendant before the trial court is that the relationship between the parties are admitted. However, apart from the plaintiff and 1st defendant, the said Narayanan had one daughter, namely, Savitribai and the mother of the 1st defendant, viz., Rukmanibai died in the year 1995. The mother of the 1st defendant alone was taking



care of her daughter. The paternal uncle namely, Nandhu Ramaiah died in the year 2002 and the partition deed dated 11.11.1948 is also admitted. At the time of effecting partition, the plaintiff was minor aged about 7 years and the defendant was also minor aged about 4 years, thereby the plaintiff and the defendant were represented by their mother, Rukmani Bai, as their natural guardian. The possession of the properties mentioned as 'B' Schedule in the partition were handed over to the plaintiff and the 1st defendant in the year 1978, when the oral partition was effected between the heirs of Narayanan.

4.1. Till then, the said Rukmanibai was only managing the properties, through the said oral partition, the plaintiff was given about 6 acres of land and the defendant was also given the similar extent of about 6 acres towards his share. The defendant's only sister got about 2 acres of land in the said oral partition. The defendant was allotted eastern portion of the house property and Item No.19 of 'A' Schedule and the portion of house property allotted to the defendant is adjoining portion of land in S.F.No.622/1B, which is also on the immediate east of the house property allotted to the defendant. Based on the partition,



separate patta has been issued to the 1st defendant during updating Survey Scheme in the year 1985, in the lands comprised in S.F.No.621 and 622/1B, the defendant was allotted specific extent of 2 acres in the said oral partition, similarly plaintiff was also allotted two acres in the said two survey numbers. In fact, the plaintiff on the basis of the said oral partition has sold his two acres of land S.F.Nos.621 and 622/B to one Ramasamy through sale deed dated 09.02.2000.

4.2. Apart from that, plaintiff also sold his self acquired property in S.F.No.922/6 to an extent of 1.90 acres to the defendant through sale deed dated 19.12.1983. On the basis of the said sale deed, separate patta has been issued in favour of the defendant in respect of the said survey number and he has been in possession and enjoyment of the same, while so, it is false that the sale deed dated 19.12.1983 in favour of the defendant is a nominal sale deed. The plaintiff having sold the property covered under sale deed dated 19.11.1973 as his self acquired property, now filed the present suit. Subsequent to the oral partition in the year 1978, there is no joint family in existence. The defendant was working as manager in co-operative department and retired from service



in the year 2002, therefore, the defendant had his own independent source of income and subsequent to the said oral partition acquired plaint properties, therefore, the allegations that through the income of 'A' 'B' schedule properties 'C' schedule properties were purchased is not correct. In fact, the defendant and the said Savithribai filed the suit in O.S.No.68 of 2005 on the file of District Munsif Court, Pochampalli in respect of specific items of the properties belonging to them and obtained a decree against the plaintiff herein. The said decree in O.S.No.68 of 2005 has become final and conclusive. While so, the allegations contra in the plaint with regard to the sale deed dated 27.08.1988 and the said suit in O.S.No.68 of 2005 are all false and concocted.

4.3. The plaintiff suppressed the fact that he had already executed sale deed dated 20.08.1987 in favour of one Murugesan in respect of extent of 3.6 acres purchased by the plaintiff. The plaintiff under the guise of helping Savitribai and her husband, grand mother Rukmini ammal appears to have been fraudulently obtained EB service connection in his own name for the Well situated in S.F.No.619. The



said suit is bad for non-joinder of necessary parties, as the sister of the defendant and the plaintiff, namely, Savitribai had not been impleaded in the suit, therefore, the suit is liable to be dismissed.

4.4 The 2nd defendant was impleaded later and she also filed written statement reiterating the written statement filed by the 1st respondent.

5. Based on the above said pleadings and after hearing both sides, the trial court has framed the following issues for Trial:-

“1. Whether the sale deed dated 19.12.1989 executed by the Plaintiff in favour of the defendant is a nominal one?

2. Whether the properties are the joint family properties?

3. Whether the oral partition already effected in between the plaintiff and the defendant?

4. Whether the ‘C’ schedule property is the self acquired property of the defendant?

5. Whether the suit is bad for non-joinder of necessary party?



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6. *Whether there is no cause of action for this suit?*

7. *Whether the suit has not been properly valued and correct court fee has not been paid by the plaintiff?*

8. *Whether the plaintiff is entitled a partition as prayed for?*

9. *To what relief the plaintiff is entitled?"*

Further, the trial Court has framed the following Additional Issues:-

"1. Whether the plaintiff has suppressed the sale deed dated 20.08.1987 executed by him in favour one Murugesan as alleged by the 2nd defendant in her written statement?

2. Whether no joint family property is in existence after the oral partition in the year 1978 as alleged by the 2nd defendant in her written statement?"

Before the trial court, on the side of the plaintiff, witnesses, P.Ws.1 to 4 were examined and marked Exhibits P.1 to P.14. On the side of the defendants, witness, D.W.1 was examined and marked Exhibits B.1 to B.10. After evaluating the oral and documentary evidences adduced on both sides, the trial court dismissed the suit.



6. Aggrieved by the said Decree and Judgment of the trial court, the plaintiff has preferred the Appeal Suit in A.S.No.81 of 2014 on the file of the learned Principal District Judge, Krishnagiri on various grounds. The First Appellate Court has framed the following points for determination :-

- “1. Whether suit properties are joint family properties?*
- 2. Whether there was an oral partition as claimed by the defendants?*
- 3. Whether the ‘C’ schedule property is the self acquired property of the 1st defendant?*
- 4. Whether the sale deed dated 19.12.1983 executed by the plaintiff in favour of 1st defendant was a nominal sale deed?*
- 5. Whether the plaintiff is entitled to partition as claimed in the suit?*
- 6. Whether the plaintiff concealed the sale deed dated 20.08.1987 and claimed ownership?*
- 7. Whether the appeal is liable to be allowed?”*

After analysing the evidences adduced on both sides, the First Appellate Court dismissed the Appeal Suit by confirming the Decree and Judgment



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of the trial court. As against the said Decree and Judgment of the Appeal suit, the present Second Appeal has been filed by the appellant / plaintiff.

7. The learned counsel appearing for the appellant would submit that the appellant is the plaintiff and he filed the suit for partition and separate possession in respect of the suit properties. In fact, 'A' Schedule properties, were allotted to the plaintiff and defendants through partition deed dated 11.11.1948 as 'B' schedule suit properties. In the said partition, the properties were allotted as common to the plaintiff and 1st defendant. The plaintiff indebted to Narayanan and Jaganathan thereby they demanded the property, hence he created a sham and nominal sale deed in favour of 1st defendant in respect of Suit B Schedule property on 19.12.1983. Through the income derived from 'A' and 'B' schedule properties, 'C' schedule property was purchased by the 1st defendant as karta of the hindu joint family property, therefore, all the suit properties are joint family properties and the plaintiff and the defendants are entitled to share over the suit properties. When the plaintiff demanded partition of the properties, the 1st defendant was not



ready for amicable partition, thereby the plaintiff filed the suit. Before the trial court, on the side of the plaintiff, witnesses, P.Ws.1 to 4 were examined and marked Exhibits P.1 to P.14. On the side of the defendants, witness, D.W.1 was examined and marked Exhibits B.1 to B.10. The courts below dismissed the suit without considering the evidences adduced on the plaintiff's side. The courts below failed to consider that partition deed dated 11.11.1948 between the appellant /plaintiff and the 1st defendant was entered by the mother of the plaintiff and the 1st defendant as guardian to the minors. There is sufficient evidence adduced by the plaintiff to prove that from the income derived from the 'A' schedule property and by borrowing loan, 'C' schedule properties, were purchased in the name of the appellant and the same were in joint possession and enjoyment of the appellant and 1st respondent /1st defendant. As far as 'B' schedule property is concerned, the sham and nominal sale deed was executed by the plaintiff in favour of the 1st defendant due to debts incurred by the plaintiff.

7.1. The 1st defendant failed to establish the oral partition in the year 1978. Since the appellants were not able to discharge the loan, the



1st defendant executed nominal sale deed in his favour in respect of 'B' schedule properties and the said property is under joint possession and enjoyment of the plaintiff and the 1st defendant. The courts below failed to consider that out of the income derived from the 'A' 'B' schedule properties, the 'C' schedule properties were purchased in the name of 1st defendant for the joint family, therefore, the judgment and decree passed by the courts below are liable to be set aside by allowing the Second Appeal.

8. The learned counsel appearing for the respondents would submit that the suit 'A' schedule properties were allotted to the plaintiff and the 1st defendant, through partition deed dated 11.11.1948. On the date of partition, the plaintiff and the 1st defendant were minors and the partition was effected between the paternal uncle namely, Nandhu Ramaiah through guardian, mother of the plaintiff and 1st defendant. Thereafter, in the year 1978, there was an oral partition between the appellant / plaintiff and the respondents/ defendants. Pursuant to the partition, 6 acres was allotted to the plaintiff, 6 acres were allotted to the 1st defendant and 2 acres were allotted to the 2nd defendant and after



partition, the plaintiff, 1st defendant and 2nd defendant were enjoying with their respective properties separately.

8.1. While so, the plaintiff who purchased the property through sale deed dated 19.11.1973 had sold the same to the 1st defendant through sale deed dated 19.12.1983 and also the 1st defendant purchased the another property through sale deed dated 27.12.1978. Therefore, the property purchased in the name of 1st defendant are his separate properties and the same were purchased through his income, as he was working in the co-operative bank, similarly, the plaintiff also purchased the properties in his name through his self earnings and the said properties were also sold. The plaintiff sold the property to one Murugesan, through sale deed dated 20.08.1987 and the same has been suppressed by the appellant / plaintiff. Already, the defendants have filed a suit in O.S.No.68 of 2005 on the file of District Munsif Court, Pochampalli as against the plaintiff in respect of specific properties belonging to them and also obtained decree, therefore, now the plaintiff filed the vexatious suit. There is no any joint family as alleged in the plaint, after partition in the year 1978, 'B' and 'C' Schedule properties



exclusively belongs to the 1st defendant, thereby prayed to dismiss the suit.

9. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents and perused the documents placed on record.

10. In this case, the plaintiff filed the suit for partition alleging that the suit 'A' to 'C' schedule properties are joint family properties. 'A' schedule obtained through partition deed dated 11.11.1948, 'B' schedule property also joint family property but a sham and nominal sale deed was executed by the plaintiff in favour of 1st defendant. Through the income of 'A' and 'B' schedule properties, the suit 'C' schedule properties were purchased and all the properties are under common enjoyment of the plaintiff and defendant. The defendant denied the joint family, according to the defendant, he admitted the partition deed dated 11.11.1948 and at the time of partition, the plaintiff and the defendants were minors, represented through their mother. Thereafter, in the year 1978, there was an oral partition between the plaintiff, 1st defendant and



other sister, Savithribai. Pursuant to the said oral partition, 6 acres of land each were allotted to the plaintiff and 1st defendant and 2 acres to Savithribai were enjoyed separately by them in respect of their respective shares. 'B' and 'C' schedule properties are the separate properties of the 1st defendant and the same were purchased through his own earnings. After 1978 there is no joint family therefore, the plaintiff has to prove his case through proper evidence. On the side of the plaintiff, witnesses, P.Ws.1 to 4 were examined and marked Exhibits P.1 to P.14. On the side of the defendants, witness, D.W.1 was examined and marked Exhibits B.1 to B.10.

11. This Court carefully perused the entire records and the Judgment of the courts below, the available evidences show that the 'A' schedule properties were obtained through partition deed dated 11.11.1948 at the time of partition, the plaintiff and the defendants were minors represented through their mother. Thereafter, the plaintiff purchased the property in his name through sale deeds dated 19.11.1973, 27.12.1978. Thereafter, he sold the property purchased in the year 1978 to one Murugesan and sold the property purchased in the



year 1983 to the 1st defendant, which is 'B' schedule in the suit. The plaintiff suppressed the sale deed in the name of Murugesan and pleaded in the plaint that the 'B' schedule property sale deed is sham and nominal. However, the plaintiff, who was examined as P.W.1 during cross examination admitted the purchase of properties by him separately and sale to Murugesan. The plaintiff failed to prove that the sale deed dated 19.12.1983 in favour of the 1st defendant is sham and nominal. Further, there is no proper evidence adduced by the plaintiff that through the income from the 'A' and 'B' schedule properties, the 'C' schedule were purchased. Further, the plaintiff and his sons entered into the partition over their family properties through Ex.A.10 and the same was also admitted by the plaintiff through cross examination. From the evidence of P.W.1 it is clear that he sold the portion of 'A' schedule properties to one Ramasamy, thereby the defence of the defendant about oral partition is probalised. The sister of plaintiff and defendant, also supported the case of the defendant. Therefore, the available evidence clearly proved the oral partition and the plaintiff failed to prove his case.



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12. It is pertinent to point out that the trial court has framed appropriate issues and examined the witnesses on both sides and came to a conclusion that the plaintiff sold the property to the 1st defendant, through Ex.A.8 sale deed dated 9.12.1983 and the same was also admitted by the plaintiff through cross examination, wherein he stated that the property belongs to the plaintiff, therefore, the contention of the plaintiff that the sale deed dated 19.12.1983 in the name of the 1st defendant is sham and nominal, cannot be accepted.

13. Further, Ex.B.10, sale deed dated 09.02.2000 reveals the partition between the plaintiff, his sons and defendants. The plaintiff also in his cross examination admitted that through Ex.B.10, the properties situated in Survey No.621 and 622/1B were sold to one Ramasamy. The said sale deed was executed by the plaintiff and his sons, Dhanraj and Purushotaman. Therefore, from the evidence of P.W.1, it is clear that there was a oral partition between the parties. As per Ex.A.7, the properties were purchased by the plaintiff and he sold the same to the 1st defendant through Ex.A.8, therefore, the properties are not joint family



properties. Further, Ex.A.9 also revealed that the 1st defendant purchased the property through separate sale deed, therefore, the properties are not joint family properties and the properties purchased by the 1st defendant from the plaintiff is not sham and nominal and came to a conclusion that there was oral partition between the parties. Since there was a oral partition effected between the parties in respect of 'A' schedule property, no decree can be passed for partition, as the properties have already been partitioned. As far as 'B' schedule is concerned, the plaintiff sold the property to the 1st defendant and the same is not sham and nominal and there is no evidence that the 'C' schedule properties were purchased from the income derived from 'A' and 'B' schedule properties and thereby the trial court dismissed the suit.

13.1. The First Appellate Court also in the judgment elaborately discussed and came to a conclusion that sale deed in the name of the 1st defendant executed by the plaintiff in respect of 'B' schedule property is not sham and nominal and the plaintiff purchased the property through his own earnings and the same is his self acquired property and he sold his self acquired property to the 1st defendant. The 1st defendant also



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purchased the properties through his own earnings and there are no records produced by the plaintiff to show that 'C' schedule properties are purchased in the name of the 1st defendant through income of the 'A' and 'B' schedule properties. Therefore, the First Appellate Court also came to a conclusion that the plaintiff is not entitled to the relief, as the 'A' schedule properties were already partitioned through oral partition and 'B' and 'C' schedule properties are self acquired properties of the 1st defendant.

14. The above said findings of the both the courts, trial court and First Appellate Court, are well reasoned judgments, based on oral and documentary evidences adduced on both sides. There is no illegality or perversity in the Judgment and Decree passed by the courts below and the courts below have appreciated the facts in a proper perspective and rendered concurrent factual findings and thereby does not warrant any interference from this Court.

On a careful perusal of the records and the grounds raised by the appellant, it is seen that there is no Substantial Questions of Law



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involved in this case and thereby the Second Appeal has no merits and deserves to be dismissed. Accordingly, the present Second Appeal is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

06-08-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

ssd

To

1. The Principal District Judge,
Krishnagiri

2. The Subordinate Judge,
Uthangarai



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P.DHANABAL, J.

ssd

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