

S.A.(MD)No.104 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 23.06.2026

DELIVERED ON : 10.07.2026

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

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1.R.Ramadoss (Died)

2.R.Jeyalakshmi

3.R.Muralikrishnan (Died)

4.S.Jeevithavani

... Appellants

[Appellants 2 to 4 are brought on record as LRs of the deceased sole appellant vide Court order dated 20.01.2022 made in C.M.P. (MD)No.8246/21 in S.A.(MD)No.104/2017 by VBSJ]

Vs.

1.Kuppavalli

2.Rengarajan

3.M.Punithavalli

4.M.Sreemurugan

5.M.Pranav

... Respondents

[Respondents 3 to 5 are brought on record as LRs of the deceased 3rd appellant vide Court order dated 19.06.2023 made in C.M.P. (MD)No.6507 of 2023 in S.A.(MD)No.104 of 2017 by AQJJ]



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PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, praying to set aside the judgment and decree dated 21.12.2016 passed in A.S.No.9 of 2015, on the file of the Principal District Court, Ramanathapuram and confirming the judgment and decree passed in O.S.No.10 of 2008 dated 24.02.2015, on the file of the Subordinate Court, Ramanathapuram.

For Appellants : Mr.C.Susikumar
For Respondent No.1 : Mr.S.Prabhu
For Respondent No.2 : Mr.A.R.Kannappan
For Respondents 3 to 5 : Mr.M.Thirunavukkarasu

JUDGMENT

The unsuccessful plaintiff in O.S.No.10 of 2008, who was also unsuccessful in his challenge by way of First Appeal in A.S.No.9 of 2015, is the appellant. Pending the appeal, the sole appellant died and his legal representatives have been brought on records as appellants. In fact, respondents 3 to 5 who are also the legal heirs of the deceased sole appellant / plaintiff and were not in good terms with appellants 2 to 4 have been arrayed as respondents 2 to 5. However, in the present Second Appeal, the case of the appellants is supported by the respondents 3 to 5 as well.



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2.I have heard Mr.C.Susikumar, learned Counsel for the appellants and Mr.M.Thirunavukkarasu, learned Counsel for the respondents 3 to 5 who support the case of the appellants and Mr.S.Prabhu, learned Counsel for the first respondent and Mr.A.R.Kannappan, learned Counsel for the second respondent.

3.The brief facts that are necessary for decision in this Second Appeal are as follows:

3.1.The plaintiff and the first defendant are brothers being sons of one Ramalingam, who was admittedly, the original owner of the suit property. After the demise of said Ramalingam, his wife and children including the plaintiff and his three daughters Saraswathi, Valli and Rajalakshmi were in joint possession and enjoyment of the suit property. According to the plaintiff, in and by a family partition effected and reduced to writing on 18.11.1976, the suit property comprised in S.No.274/4, was allotted to the share of the plaintiff. The said unregistered partition deed has been exhibited as Ex.A.1, before the Trial Court. It is the specific case of the plaintiff that ever since, the plaintiff has been in separate and exclusive possession and enjoyment of the suit properties. The grievance of the plaintiff before the Trial Court and in the plaint is that despite the partition dated 18.11.1976, the first defendant has



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published public notices, as if his wife had a right in the suit property and thereafter, in December 2007, the first defendant also attempted to interfere with the plaintiff's peaceful possession and enjoyment of the suit properties. The second defendant is the purchaser of the suit schedule property in and by sale deed dated 05.10.2005, pursuant to a settlement deed dated 19.09.2002.

3.2.The case of the first defendant in the written statement was that there was no such partition deed executed on 18.11.1976 and further, the plaintiff was not in possession and enjoyment of the suit properties pursuant to the alleged partition deed dated 18.11.1976. It is also contended by the first defendant that even pursuant to the alleged partition deed dated 18.11.1976, the plaintiff and the first defendant have jointly alienated the properties belonging to the family and therefore, the partition deed cannot be said to have been acted upon as well. The first defendant also claims that his wife, in and by settlement deed dated 19.09.2002, had settled the property in favour of the first defendant and in turn, the first defendant has also alienated the same in favour of the third defendant on 05.10.2005. It is relevant to note here that the second defendant is the wife of the first defendant.



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3.3.The third defendant filed an independent written statement stating that the first defendant, along with the plaintiff, even after the alleged 17.11.1986 family partition, have sold lands comprised in S.No.260/1 on 02.07.1980, where the parties have admitted that the first defendant is also in joint possession and enjoyment of the said property and in such circumstances, the theory of unregistered family partition stands falsified. It is also contended that claiming an imaginary pathway on the northern side and with ulterior motives, the suit has been filed. It is also contended by the third defendant that he is a *bonafide* purchaser, under registered sale deed dated 05.10.2005 and his vendor has derived absolute right by registered settlement deed dated 19.09.2002. The third defendant also contending that the plaintiff has no right in the suit properties, sought for dismissal of the suit.

3.4.Before the Trial Court, on the side of the plaintiff, three witnesses were examined and Exs.A.1 to A.3 were marked. On the side of the defendants, D.W.1 was examined and Exs.D.1 to D.5 were marked. The Trial Court, on appreciation of the pleadings, oral and documentary evidence, dismissed the suit. Aggrieved by the dismissal of the suit, plaintiff preferred A.S.No.9 of 2015. The First Appellate Court concurred with the findings of the Trial Court



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and dismissed the appeal. It is challenging the said concurrent findings that the present Second Appeal has been filed.

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4.Learned Counsel for the appellants and the learned Counsel for the respondents 3 to 5, would firstly contend that even in the settlement deed which is the title document for the second respondent, there is a clear reference to the partition deed dated 18.11.1976 and therefore, it did not lie in the mouth of the contesting respondents to deny the partition arrangement amongst the family members. They would also state that merely because there has been an alienation, jointly by the plaintiff and the first defendant of other items of property, it will not invalidate the oral partition deed which has been reduced to writing and mere fact that the said document was unstamped or unregistered cannot be taken advantage of by the contesting respondents.

5.Learned Counsel would also state that the Courts below ought to have held that the partition arrangement on 18.11.1976, was admissible in evidence without registration, as it only recorded a previously completed oral partition which had also been acted upon. Learned Counsel would therefore, state that the Courts below erred in drawing adverse inference from mere fact that other



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properties were jointly dealt with by the plaintiff and the first defendant, which would not imply that the suit properties also remained undivided. Reliance is placed on the decision of the Hon'ble Supreme Court in the case of ***Roshan Singh Vs. Zile Singh***, reported in ***1988 AIR 881***, where the Hon'ble Supreme Court held that when a writing merely recites that there has in time past been a partition, then such document would only be a mere list of properties allotted at a partition, not tantamounting to an instrument of partition and therefore, it does not require registration.

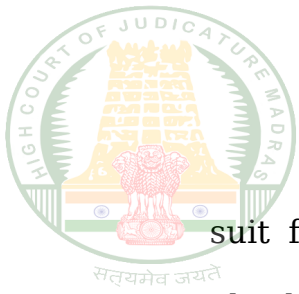
6.Learned Counsel would also rely upon the decision of the Hon'ble Supreme Court in ***Kale Vs. Deputy Director of Consolidation***, reported in ***AIR 1976 SC 807***, where the Hon'ble Supreme Court held that Courts are bound to uphold family arrangements which are conducive to settlement of disputes and maintenance of peace and harmony in the family and family arrangements can even be oral and need not be in writing at all and if it is in writing, not meant to be an operative document but merely records the fact of a previous oral arrangement, then such a document is not required to be registered.



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7.Learned Counsel for the appellants and respondents 3 to 5 would also reiterate that the subsequent sales effected in 1980 jointly by the plaintiff and the first defendant would not take away the divided status under Ex.A.1 dated 18.11.1976. They would also contend that the plaintiff has been in possession and enjoyment for more than 30 years, ever since the partition in 1976 and suit was instituted only on account of the attempt of the first defendant to interfere with the plaintiff's possession. They would also contend that the First Appellate Court has misread the oral evidence of the parties and came to an erroneous conclusion that mere sharing of a common boundary or access would not defeat a claim of separate possession. It is also their contention that the first defendant had no right to convey the plaintiff's share to the second defendant, his wife and consequently, the second defendant could not have alienated the suit property to the third defendant, who cannot claim to have acquired a valid title over the suit property, since the suit properties have already been allotted to the plaintiff in the year 1976 partition arrangement.

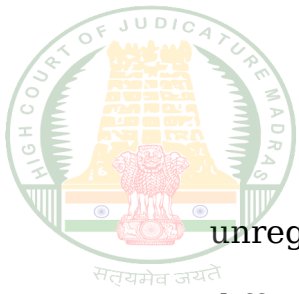
8.Per contra, learned Counsel appearing for the contesting respondent Mr.A.R.Kannappan, learned Counsel appearing for the purchaser and the present owner would firstly contend that in a



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suit for declaration, the plaintiff having come to Court claiming absolute right in respect of the suit property ought to have independently established his entitlement and cannot rely upon the weakness in the case of the defendants. He would also state that Ex.A.1 partition deed, even assuming, it is admissible in evidence and can be looked into, did not allot the suit survey numbers in favour of the plaintiff.

9.Mr.A.R.Kannappan, would also state that in any event, the Courts below have rightly non-suited the plaintiff for claiming right under an unregistered partition arrangement dated 18.11.1976, which it is not only unstamped, but also unregistered. Referring to Ex.A.1, apart from pointing out that it did not relate to the survey numbers, he would also contend that there is absolutely no reference or indication that there was an earlier oral arrangement. He would therefore, state that the Courts have concurrently and rightly found that the plaintiff was not entitled to any relief, much less the relief prayed for in the suit. It is also his submission that though the registered document in favour of the second respondent refers to the unregistered partition deed, it does not automatically cloth the plaintiff with a right to a declaratory relief, when the plaintiff has not been able to establish that Ex.A.1, namely



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unregistered deed also covers the suit properties, which are totally different survey numbers.

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10.Mr.A.R.Kannappan, would also point out that the plaintiff was entitled only to the property in the southern side and not the eastern side. Though Mr.M.Thirunavukkarasu, learned Counsel for the respondents 3 to 5, invited my attention to the written statement filed by the first defendant, admitting to the fact that the plaintiff had right on the southern side and therefore, a contradictory stand cannot be taken, on going through the registered document which has been exhibited by the trial Court, I am unable to see that the first defendant had projected the correct picture with regard to the boundaries. The pleadings and evidence, therefore, contrary to the registered document cannot prevail over the contents of the registered documents which were exhibited before the Court. He would therefore, pray that the Courts below have rightly non-suited the plaintiff to any relief and under Section 100 of CPC, no interference is warranted.

11.I have carefully considered the submissions advanced by the learned Counsel for the parties.



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12.The fact that the property originally belonged to one Ramalingam, is admitted all round. The said Ramalingam, had two sons Ramadoss and Ekambaram. Kuppavalli is the wife of Ekambaram. Ramalingam was blessed with three daughters who are admittedly not parties to the suit. The specific case on which the plaintiff came to Court is that suit S.Nos.274/4 and 267/8, were allotted to the plaintiff under a partition deed dated 18.11.1976 and it is the further case of the plaintiff that ever since, the said partition, the plaintiff has been in possession and enjoyment. According to the plaintiff, even the first defendant has acquiesced to the said partition arrangement dated 18.11.1976, by relying on the same, while conveying the property in favour of the third defendant and even the settlement deed executed by the first defendant in favour of the second respondent refers to the said partition deed dated 18.11.1976.

13.In such view of the matter, it is not open to the defendants 2 and 3 to contend that the partition deed dated 18.11.1976 was not a true and genuine document. However, the fact remains that being a suit for declaration and the plaintiff claiming absolute rights in respect of S.Nos.274/4 and 267/8 of Alagankulam Village, Ramanathapuram District, it is incumbent on the plaintiff to have



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established that he is entitled to the said property in the first place.

The only document on which reliance is placed on is Ex.A.1. It is admittedly an unregistered and unstamped partition deed. Both the Courts have non-suited the plaintiff on the ground that such an unregistered document is an admissible evidence. Even assuming that a benefit of doubt can be given in favour of the plaintiff and his legal representatives, since the first defendant has also referred to the very same partition deed dated 18.11.1976, while settling the property in favour of the second defendant, which forms the basis of the title deed in favour of the third defendant, on going through Ex.A.1 in original, though it is in a very bad state, the papers being old and crumbled, I have made a sincere attempt to read the entire contents of Ex.A.1, as rightly contended by Mr.A.R.Kannappan, suit S.Nos.274/4 and 267/8 are not forming part of Ex.A.1. Further, there is also no indication that there was an earlier partition amongst the family members and that it has been reduced to writing under Ex.A.1. In such circumstances, I do not see any error committed by the Trial Court and the First Appellate Court in holding that Ex.A.1 cannot be looked into, especially, when the plaintiff claims right under said unregistered and unstamped document. I do not find any illegality or perversity in the findings of the Courts below, in this regard.



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14.Further, in a suit for declaration, the plaintiff is bound to establish his right, title and interest and the plaintiff cannot rely upon the weakness in the defence put up or raised by the defendant. Even from this angle, when the plaintiff has not been able to establish that the suit properties were allotted to him under Ex.A.1, even assuming Ex.A.1 can be looked into, for such limited purposes, apart from Ex.A.1, the plaintiff is not in a position to establish as to how suit S.Nos.274/4 and 267/8, were allotted to him in the first place.

15.In such circumstances, the Courts below have rightly denied the relief of declaration in favour of the appellant / plaintiff. Though it has been contended by Mr.M.Thirunavukkarasu as well as Mr.C.Susikumar, that the defendants have virtually admitted to the partition deed and also the lie of the property by reference to only the southern side in the written statement, as rightly argued by Mr.A.R.Kannappan, in a suit for declaration, the plaintiff has to stand on his own case and cannot fall back on the lacuna or weakness in the defence set up by the defendants. In such view of the matter also, having found that the plaintiff has failed to establish his right to suit S.Nos.274/4 and 267/8, I am unable to see how any substantial question of law arise for consideration in the



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matter, especially when the Courts below have arrived at findings based on pleadings as well as oral and documentary evidence adduced by the parties. I do not find any misreading of evidence or misinterpretation of the pleadings or documents brought on record before the Trial Court. Therefore, under Section 100 of CPC, I do not see any justifiable grounds to interfere with the concurrent findings of fact arrived at by the Trial Court and affirmed by the First Appellate Court.

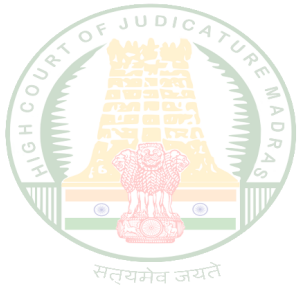
16.For the above reasons, there is no merit in this Second Appeal and the same stands dismissed with costs.

10.07.2026

Index : Yes / No

NCC : Yes / No

MR



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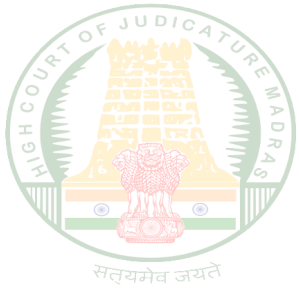
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To

1.The Principal District Court,
Ramanathapuram.

2.The Subordinate Court,
Ramanathapuram.

3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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P.B.BALAJI, J.

MR

PRE-DELIVERY JUDGMENT MADE IN

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