

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**RESERVED ON : 07.03.2018**

**PRONOUNCED ON : 06.04.2018**

**CORAM**

**THE HONOURABLE MR.JUSTICE T.RAVINDRAN**

**S.A.No.16 of 2004**

1. Sivasami  
2. Prakasam

...

Appellants

Vs.

1. Raman  
2. Rajagopal  
3. Vijayan  
4. Kumar  
5. Mariyappan

...

Respondents

**Prayer :-** Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 10.07.2002 passed in A.S.No.9 of 2001 on the file of the Subordinate Court, Dharmapuri, confirming the Judgment and Decree dated 22.12.2000 passed in O.S.No.751 of 1993 on the file of the District Munsif Court, Harur.

For Appellants : Mr.P.Veeraraghavan  
For Respondents : Mr.R.Rajamani

**JUDGMENT**

Challenge in this second appeal is made to the Judgement and Decree dated 10.07.2002 passed in A.S.No.9 of 2001 on the file of the Subordinate Court, Dharmapuri, confirming the Judgment and Decree dated 22.12.2000 passed in O.S.No.751 of 1993 on the file of the District

Munsif Court, Harur.

2. Parties are referred to as per their rankings in the trial Court.

3. Suit for declaration and permanent injunction.

4. The case of the plaintiffs, in brief, is that the plaintiffs are brothers and that, the suit property and the other properties originally belonged to the plaintiffs' father and he is in possession and enjoyment of the same till his life time and after his demise, the plaintiffs have partitioned their ancestral properties by way of the partition deed dated 11.07.1962 and the suit property has been kept in common. The suit property consists of Well and 5 H.P oil engine pumpset and accordingly, the plaintiffs are in possession and enjoyment of the suit property and the defendants have no right, title or interest in respect of the suit property. The defendants are Pangalis to the plaintiffs and inimical towards the plaintiffs and accordingly, the defendants, on account of their inimical attitude towards the plaintiffs, attempted to bury the dead body of their aunty by name Angammal in the suit property contending that the plaintiffs have buried their parents' dead bodies in a portion of the suit property, but, the same had been prevented and further, the defendants are proclaiming that they would trespass into the suit property for burying the dead body and thereby, denied the title of the plaintiffs in respect of the suit property and hence, according to the plaintiffs, they had been necessitated to lay the suit for appropriate

reliefs.

5. The case of the defendants, in brief, is that the suit is not maintainable either in law or on facts. It is false to state that the suit property belonged to the plaintiffs' father and after his death, the plaintiffs had partitioned the properties belonging to their father by way of the partition deed dated 11.07.1962 and thereunder, they had kept the suit property in common. It is true that the defendants are pangalis to the plaintiffs. However, it is false to state that the defendants are inimical towards the plaintiffs for several years and the defendants are proclaiming that they would bury dead body in the suit property. The suit property is in unequal position and the same had been used only as burial ground for the families of the plaintiffs and the defendants and the plaintiffs have suppressed the above facts and laid the suit falsely. The suit property has not been properly described and there is a Well in the middle of the suit property and the northern side of the Well is used as burial ground by the families of the plaintiffs and the defendants and the suit property had been subdivided much prior to the filing of the suit and never cultivated by anyone including the plaintiffs and the plaintiffs never claimed exclusive right over the suit property. The suit property is having several dead bodies of the defendants' family members and several tombs are erected in the suit property in connection with the burial of the dead bodies. The partition deed projected by the plaintiffs is not binding upon the defendants and the revenue documents had been obtained

behind the back of the defendants without notice and hence, the above said documents are not binding upon the defendants and hence, the suit is liable to be dismissed.

6. In support of the plaintiffs' case, PWs1 & 2 were examined and Exs.A1 to A8 were marked. On the side of the defendants, DWs1 to 7 were examined and Exs.B1 to B6 were marked. Exs.C1 & C2 were also marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Courts below were pleased to dismiss the suit laid by the plaintiffs. Aggrieved over the same, the present second appeal has been laid.

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:

**" (i). Whether the judgment and decree of the lower appellate Court without framing the points for consideration as required under Order 41, Rule 31 C.P.C., are valid and according to law.**

**(ii). Whether the Courts below having found that the appellants had title**

***to the suit lands under Exhibit A1 and possession under Ex.A2 to A8 were right in law in sustaining the claims of the respondents/defendants who are not residing nor owning any land adjacent/near the suit land to use the suit land as burial ground?***

***(iii). Whether in the absence of any pleading with all particulars of the alleged right to bury the dead bodies of the family members of the respondents in the suit land, the lower appellate Court was right in law in upholding such rights in the suit property."***

9. The plaintiffs claim that the suit property and the other properties are their ancestral properties and by way of the partition deed dated 11.07.1962 marked as Ex.A1, they had divided the ancestral properties and the suit property is kept in common and accordingly, it is found that the plaintiffs have produced the patta as well as kist receipt, Chitta extract and Adangal extract in support of their case.

10. The defence taken by the defendants is that the suit property has been used only as the burial ground for the families of the plaintiffs and the defendants, who are Pangalis to each other and in such view of the matter, the plaintiffs are not entitled to any exclusive claim of title to

the suit property and the plaintiffs by way of their acquiescence had been permitting the burial of the dead body in the suit property from time immemorial and hence, the plaintiffs are not entitled to obtain the reliefs sought for.

11. Even as per the case of the plaintiffs, they had buried their parents in the suit property. Materials placed on record go to show that dead bodied had been buried in the suit property over a period of time. It is further seen that the dead body of the constable, by name, Rajendran had also been buried in the suit property and in this connection, it is seen that the parties had went up to the police station for settling out their dispute and accordingly, the parties had also entered into a Muchalika marked as Ex.B2 and it is thus found that the dead body of the constable Rajendran had also come to be buried in the suit property. The plaintiffs themselves have come forward with the suit on the footing that the defendants attempted to bury the dead body of their aunty Angammal in the suit property and accordingly, laid the suit for necessary reliefs.

12. In this matter, the commissioner report and plan marked as Exs.C1 & C2 would go to show without any doubt that features obtaining in the suit property only point out that the same had been used only as the ground for burying the dead body, accordingly, the commissioner has

noted the pillar construction etc., on the suit property, which evidently point out that the suit property had been utilised by the parties concerned for burying the dead body of their relatives and friends. In such view of the matter, it is found that accordingly, the plaintiffs had also not chosen to divide the suit property amongst themselves and on the other hand, proceeded to leave the same in common.

13. As rightly found by the Courts below, merely from the revenue records marked by the plaintiffs, we cannot safely conclude that the plaintiffs have exclusive title, possession and enjoyment of the suit property. Similarly, it has not been explained by the plaintiffs as to how their father had derived title to the suit property exclusively and in such view of the matter, merely because, the plaintiffs had left the suit property in common by way of the partition deed dated 11.07.1962 marked as Ex.A1 that by itself would not entitle to the plaintiffs to claim any exclusive right over the suit property.

14. As rightly found by the Courts below, it is found that the plaintiffs alone are not shown to be the owners of the suit property and on the other hand, the documents produced and placed on record would go to show that even others, as determined by the Courts below, viz., Pramalatha and others also have right and interest in respect of the suit property and the same could be seen from the Adangal extract marked as

Ex.B5. It is found that there is no material as such placed by the plaintiffs to safely conclude that the suit property has been in the exclusive possession and enjoyment of the plaintiffs right from the days of their predecessor in interest.

15. As rightly determined by the Courts below, when it is found that the suit property has been put in use only for the burial of the dead bodies of the parties concerned and when the parties are related to each other as Pangalis and when the physical features obtaining in the suit property, as noted by the commissioner, clearly point out that the suit property has been used only for burying the dead bodies and further, when it is further seen that as determined by the Courts below, the suit property has not been properly described and not only the plaintiffs, even others are also in possession and enjoyment of the suit property as found by the Courts below, it is seen that the plaintiffs cannot be permitted to seek any exclusive title, possession and enjoyment of the suit property and considering the nature of the dispute between the parties concerned, as to the burial right each claim in the suit property and when it is noted that the plaintiffs have themselves admitted that their parents dead bodies were buried in the suit property and further when it is noted that other dead bodies had also been buried in the suit property over a period of time and the parties had also entered into a Muchalika, by which, the dead body of the police constable, by name, Rajendran had also come to

be buried in the suit property, as rightly determined by the Courts below, inasmuch as the plaintiffs have not placed any acceptable and reliable material to show that they alone have exclusive title, possession and enjoyment of the suit property and on the other hand, the materials projected disclose that the suit property has been in the common enjoyment of the plaintiffs and the defendants for the purpose of burying the dead bodies of their friends and relatives, in my considered view, no substantial question of law is found to be involved in this second appeal and the Courts below seem to have properly appreciated the materials placed on record in the right perspective and accordingly, giving acceptable reasonings found to have rightly rejected the plaintiffs' lis. The first appellate Court, in the main point for determination, has gone into the aspects of the issues involved in the matter in all points and accordingly, found concurrence with the trial Court by giving justifiable reasonings for declining the reliefs sought for by the plaintiffs. As rightly determined by the Courts below from the partition deed marked as Ex.A1, we cannot safely conclude that the suit property is the ancestral property belonging to the plaintiffs' family exclusively and further, as rightly determined by the Courts below, the revenue documents marked as Exs.A2 to A6 by itself cannot be the basis for upholding the plaintiffs' exclusive claim of title, possession and enjoyment of the suit property, when the materials placed on record go to show that the suit property has been used in common only as the burial ground of the parties

concerned and in such view of the matter, it is found that the Courts below were justified in rejecting the plaintiff's claim. The substantial questions of law formulated in this second appeal are accordingly answered against the plaintiffs and in favour of the defendants.

In conclusion, the second appeal fails and accordingly, is dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

06.04.2018

Index : Yes / No

Internet : Yes / No

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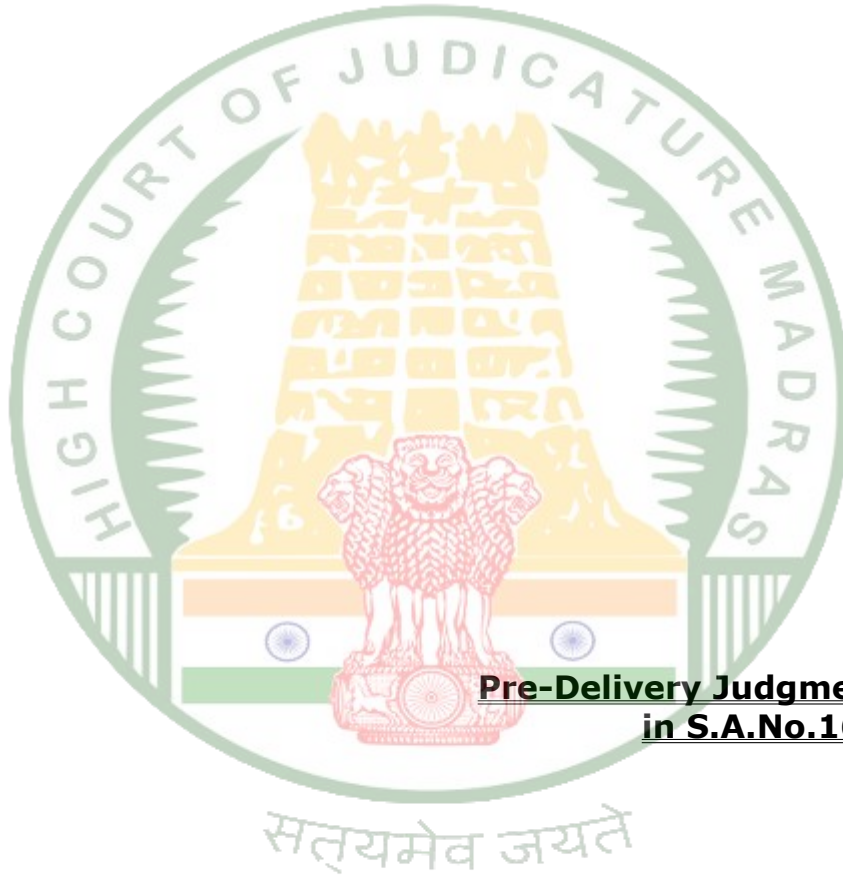
To

1. The Subordinate Court, Dharmapuri.
2. The District Munsif Court, Harur.
3. The Section Officer, V.R. Section, High Court, Madras.

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**T.RAVINDRAN, J.**

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**Pre-Delivery Judgment made  
in S.A.No.16 of 2004**

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**06.04.2018**