

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.03.2020

CORAM: The Hon'ble Mr.Justice N.Seshasayee

S.A.No.285 of 2005
& C.M.P.No.4123 of 2005

Palanisamy

...Appellant/Plaintiff

Vs.

1.Annamalai Padayachi (died)
2.Asalambal
3.Periyammal
4.Anajalaiammal
5.Malliga
6.Adhimoolam
7.Anbuselvan
8.Tamilselvan

....Respondents/Defendants

[RR5 to 8 brought on record as LRS
of the deceased R1 viz., Annamalai
Padayachi Vide Order of Court dated
24/01/2020 made in CMP.NO.1267,
1268 AND 1273/2020 in SA.No.285
of 2005

Prayer:- Second Appeals filed under Section 100 of Civil
Procedure Code against the Judgment and Decree of the
Additional Sessions Judge(Fast Track Court) Kallakurichi dated
21-11-2002 made in A.S.No.20/2002 partly dismissing the appeal
from the Judgement and Decree of the 1st Additional District
Munsiff, Kallakurichi dated 26-02-1999 in O.S.No.1089/1992.

For Appellant : Mr.K.Balakrishnan

For Respondents : R1-died (steps taken Vide Court
order dt.02.01.2020)

Ms.R.Meenal for R2 & R5 to R8

R3- No Appearance
R4-Dismissed Vide
Court order dt 17/12/2009

JUDGMENT

The plaintiff is the appellant before this Court and this appeal arises out of a suit for declaration of title and for permanent injunction. Before the trial Court, the plaintiff lost the suit in entirety and on an appeal preferred by him in A.S.No.20 of 2002 he tasted partial success. As to the reminder, the plaintiff has come forward with the appeal. The parties would be referred to by their ranks before the trial court.

2. The suit property is described as a block of agricultural land measuring 2.88 acres. This property was purchased by a certain Karuppan under Ext.B.4 sale deed dated 10.08.1932. Karuppan had two sons and three daughters. These three daughters are defendants 2 to 4. His two sons are Marimuthu and Veeramuthu. Plaintiff is the son of Veeramuthu. According to the plaintiff, the suit property is a joint family property purchased by Karuppan for the benefit of the joint family, that in 1973 it was orally divided as between Marimuthu and Veeramuthu. Accordingly, Veeramuthu became entitled to 1.44 acres and the remaining was vested with Marimuthu. On Veeramuthu's demise, his 1.44 acres in the suit property devolved on the plaintiff and Vide Ex.A.2, sale deed dated 28.11.1985, the plaintiff had purchased remaining 1/2 share from Marimuthu and under UDR scheme, patta was issued in the name of the plaintiff and thus, the plaintiff is the absolute title holder of the entire property. As he faced some obstructions to his title from the defendants, the suit was laid.

3. The case of the defendants is that the suit property is not a joint family property in the hands of Karuppan, nor was it ever orally divided, that Karuppan during his life time had settled 1.73 acres out of the entire property to his three daughters (defendants 2 to 4) and subsequently, on 24.08.1987 under Ext.B.2, Karuppan and his three daughters sold this block of land measuring 1.73 acres to the first defendant. The first defendant resisted plaintiff's title to the property that he had purchased under Ext.B2.

4.1 The suit went to trial and before the trial Court, the plaintiff examined himself as P.W.1. He also produced Ext.A.1, a document purported to evidence a partition said to have taken place between his father Veeramuthu and uncle Marimuthu in 1973. P.W.2, Kandasamy is stated to be an attester to the said document. For the defendants, the defendants 1 and 2 have examined themselves as D.W.1 and D.W.2 and besides, they also examined an independent witness.

4.2 The trial Court found that the suit property is not an ancestral property or joint family property in the hands of

Karuppan. It also held that the genuineness of Ex.A1 document is suspect inasmuch as Marimuthu's signature in Ext.A.2 varied vastly with the one attributed to him in Ext.A.1. Thirdly, the patta continued to stand in the name of the father Karuppan notwithstanding the alleged partition in 1973. Applying the rule of probability, it held that the property was not a joint family property but was a self-acquisition of Karuppan, and proceeded to dismiss the suit.

5. When the matter reached the first appellate Court, the first Appellate Court confirmed the findings of the trial Court on each of the aspect herein above stated. However, it modified the decree of the trial Court in granting a decree in favour of the plaintiff to the remaining extent of 1.15 acres. Aggrieved by the said decree which denied his title to 1.73 acres, the plaintiff has now approached this Court.

6. The appeal is not yet admitted. Heard, the learned counsel on either side and perused the typed set of papers.

7. On appreciating the pleadings and judgements of the Courts below, more particularly the judgement of the first Appellate Court, this Court finds no error in the approach of the Courts below. This apart, the finding is one on fact, and the reasoning given by the Courts below indicate a strong probability to support their respective finding on the disputed fact, which eschews the possibility of perversity affecting the said finding. In conclusion, this Court does not find any merit in the second appeal and accordingly it is dismissed.

8. In the result, the second appeal is dismissed and the Judgment and Decree of the Additional Sessions Judge (Fast Track Court), Kallakurichi dated 21.11.2002, made in A.S.No.20/2002, partly dismissing the Judgment and Decree of the 1st Additional District Munsiff, Kallakurichi, dated 26.02.1999 in O.S.No.1089/1992 is upheld. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar (CS-CCC)

//True copy//

Sub Assistant Registrar

tsg

To:

1.The Additional Sessions Judge(Fast Track Court),
Kallakurichi.

2.The First Additional District Munsiff,
Kallakurichi.

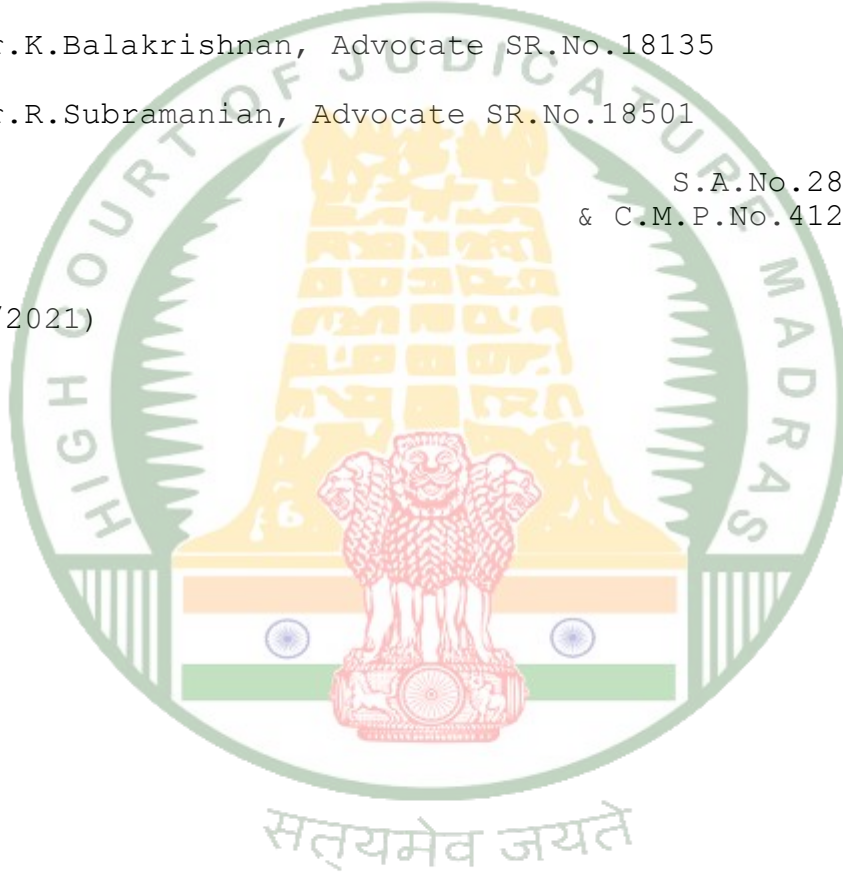
3.The Section Officer
VR Section, High Court, Madras.

+1cc to Mr.K.Balakrishnan, Advocate SR.No.18135

+1cc to Mr.R.Subramanian, Advocate SR.No.18501

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PA(CO)
GMY(23/04/2021)



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