

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[JUDGMENT RESERVED ON : 11.01.2021]

[JUDGMENT PRONOUNCED ON : 01.04.2021]

CORAM :

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.Nos.960 and 961 of 2000

Viruthambal ...Appellant / Appellant / I<sup>st</sup> Defendant  
in S.A.No.960 of 2000  
...Appellant / Appellant / Plaintiff  
in S.A.No.961 of 2000

..Vs..

1.Samikannu (Died)  
2.Krishna Pillai  
3.Pachaiyappan  
4.Elumalai  
5.Kuppammal  
6.Indirani

...Respondents 2 to 6 / Respondents 2 to 6 /  
Defendants 2 to 6

7.Anbalagan  
8.Elumalai  
9.Kuppu  
10.Kamatchi  
11.Suresh  
12.Manikandan  
13.Arumugam  
14.Chandran

...Respondents 7 to 14 in S.A.No.960/2000 /  
LR of the R1 (Plaintiff)

[Respondents 7 to 14 brought on record  
as LRs of the deceased first  
respondent viz., Samikannu vide order  
of Court dated 17.07.2019 made in  
C.M.P.Nos.21955, 21957 & 21961/2018 in  
S.A.No.960/2000]

1.Samikannu (Died)  
2.Subramanian  
3.Adhikesavan  
4.Anbalagan  
5.Elumalai  
6.Kuppu  
7.Kamatchi

...Respondents 2 & 3 / Respondents 2 & 3

8.Suresh  
9.Manikandan  
10.Arumugam  
11.Chandran

...Respondents 4 to 11 /  
LR of the decd. R1 in S.A.No.961/2000

[Respondents 4 to 11 brought on record as LR's of the deceased first respondent viz., Samikannu vide order of Court dated 17.07.2019 made in C.M.P.Nos.22344, 22347 & 22349/2018 in S.A.No.961/2000]

Prayer in both S.As. : Appeals are filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 11.06.1999, passed by the learned Additional District Judge, Thiruvannamalai, in A.S.Nos.17 and 18 of 1997 respectively, confirming the judgment and decree dated 29.11.1996 passed by the learned Second Additional District Munsif, Thiruvannamalai, in O.S.Nos.503 and 385 of 1983 respectively.

In S.A.No.960/2000

|                |   |                      |
|----------------|---|----------------------|
| For Appellant  | : | Mr.M.V.Venkataseshan |
| For R.1        | : | Died                 |
| For R.2 to R.6 | : | No Appearance        |
| For RR.7 to 14 | : | Mr.S.Vediappan       |

In S.A.No.961/2000

|                    |   |                      |
|--------------------|---|----------------------|
| For Appellant      | : | Mr.M.V.Venkataseshan |
| For R-1            | : | Died                 |
| For R2 & R4 to R11 | : | Mr.S.Vediappan       |
| For R.3            | : | Died                 |

#### COMMON JUDGMENT

Both the second appeals are arising out of a common judgment and decree dated 11.06.1999, passed by the learned Additional District Judge, Thiruvannamalai, in A.S.Nos.17 and 18 of 1997 respectively, confirming the judgment and decree dated 29.11.1996 passed by the learned Second Additional District Munsif, Thiruvannamalai, in O.S.Nos.503 and 385 of 1983 respectively.

2. Viruthambal as plaintiff has filed the suit in O.S.No.385 of 1983 on the file of the learned Second Additional District Munsif Thiruvannamalai, for the reliefs of declaration and for permanent injunction. The learned Second Additional District Munsif, Thiruvannamalai, after considering the relevant points,

has decreed the suit only in respect of declaration of half share in the suit property and negatived in respect of declaration half share and relief of injunction.

3. Aggrieved against the said disallowed portion of half share in the suit property, the plaintiff/Viruthambal has filed an appeal in A.S.No.18 of 1997.

4. Samikannu as plaintiff has filed the suit in O.S.No.503 of 1983 before the learned Second Additional District Munsif, Tiruvannamalai, for partition of half share in the suit property and also for mesne profits. Since the suit properties in both the Suits are one and the same, on joint memo, cases are clubbed together, evidence was recorded in O.S.No.385 of 1983 and after hearing the common arguments, common judgment was rendered on the very same day.

5. Aggrieved against the judgment passed in the respective Original Suits, the above said A.S.Nos.17 and 18 of 1997 were filed before the learned Additional District Munsif, Tiruvannamalai, and by a common judgment dated 11.06.1999, both the appeals were dismissed and hence, the above two second appeals.

6. In both the second appeals, notice of motion was ordered on 18.07.2000 and no substantial questions of law were framed. After service of notice, the case was posted for final hearing and common arguments were heard. Considering the fact that no substantial questions of law were framed till today, the following substantial questions of law are framed.

"A) Whether the Courts below are right in holding that the first respondent is entitled to for half share in the suit property, when the Court sale of the entire suit property was not at all set aside by process known to law?

B) Whether the Courts below are right in denying declaration of title to the appellant when the Court sale was not challenged and when the appellant is a purchaser from the court auction purchase?"

7. Heard Mr.M.V.Venkataseshan, learned counsel for the appellant in both cases and Mr.S.Vediappan, learned counsel appearing for respondents 7 to 14 in S.A.No.960 of 2000 and respondents 2 and 4 to 11 in S.A.No.961 of 2000.

8. For the sake of convenience, the parties are referred to as per their ranking in O.S.No.385 of 1983.

9. The plaintiff/Viruthambal has filed the suit in O.S.No.385 of 1983 for declaration of title to the entire extent of suit property while the first defendant in the said suit viz., Samikannu has filed the suit in O.S.No.503 of 1983 seeking partition of the property viz., half share in the suit property. The suit filed by Viruthambal in O.S.No.385 of 1983 was decreed to the limited extent of half share only while the suit filed by Samikannu for partition of half share of the property was decreed and hence, the above two second appeals.

10. The common facts, which are involved in both the cases, are as under:-

(a) The suit property is originally belonging to Krishna Pillai having purchased the same by selling his properties at Nochimalai Village. He purchased those properties jointly in the name of his son Pachaiyappan and in the name of his wife.

(b) One Basavanna Chowdry had filed a suit in O.S.No.1/76 on the file of the District Munsif Court, Thiruvannamalai, for the relief of recovery of advance amount paid by him in furtherance of a sale agreement. He attached the schedule mentioned property and brought the same in court action. He obtained a permission and purchased the suit property in R.E.P.No. 492/77 on the file of the District Munsif Court, Thiruvannamalai, in Public auction. On 13.09.1978 auction was confirmed and he took delivery in R.E.A.No. 384/79 on 11.10.1979.

(c) After delivery, there was a dispute between the court auction purchaser Basavanna Chowdhry and the plaintiff's sister's husband Thangavelu Gounder. So, Basavanna Chowdhry had filed another suit in O.S.No.1165/81 on the file of the District Munsif Court, Tiruvannamali. Subsequently, Thangavelu Gounder and Balambal Ammal had delivered the property to Basavanna Chowdhry, hence he got the dismissal of the suit as settled out of the Court.

(d) The plaintiff/Viruthambal Ammal has purchased the suit property from Basavanna Chowdhry on 02.04.1983 under a registered Sale Deed for a valuable consideration of Rs.20,000/- and he is in possession.

(e) The plaintiff has filed the suit for declaration and for permanent injunction against the defendants restraining them in any manner from interfering with the plaintiff's peaceful possession.

11. The stand of Samikannu/first respondent herein/plaintiff in O.S.No.503 of 1983 is as follows:-

(a) Krishna Pillai did not have any land. Rajambal Ammal and her son Pachaiyappan had independent source of income, for purchasing the suit property as well as in dry survey number 68/1 to an extent of 1.62 acres for Rs.7,000/- under a Sale Deed dated 20.11.1975. From the date of purchase onwards, they are in possession and they are the absolute owner of those properties.

(b) The decree obtained by Basavanna Chowdhry against the said Krishan Pillai and his son Pachaiyappan is not binding on Rajambal Ammal and she is not a party to the said decree. So, the alleged court auction sale by Basavanna Chowdhry is invalid, and consequently, Rajambal Ammal's share in the suit property cannot be sold and could not be sold. Rajambal Ammal died in October 1978 leaving behind her husband, two sons and two daughters to succeed her estate.

(c) There was absolutely no compromise between Basavanna Chowdhry and Rajambal Ammal and the share of Rajambal Ammal is continued to be with her till her death. The alleged court delivery is only a paper delivery and the possession of the Rajambal Ammal is not disturbed.

(d) After the death of Rajambal Ammal, her heirs were in possession and enjoyment of the share of Rajambal Ammal till they sold the same in favour of the first defendant. So, the plaintiff is not in possession of the suit properties as absolute owner and she is entitled to get half share in the suit property and nothing more.

(e) The defendants are the co-owners along with the plaintiff. The first defendant had purchased half share of Rajambal Ammal from her heirs on 05.03.1983 for a valuable consideration and the Sale Deed was duly attested by Krishna Pillai. So, the first defendant is the owner of the half share in the suit property and the plaintiff is not entitled to get any relief against the defendants as prayed for in the plaint.

12. In addition thereto, it is the specific case of the first defendant/Samikannu that the properties are originally belonged to Pachaiyappan and his mother Rajambal Ammal having purchased under a registered Sale Deed dated 26.11.1973.

13. From the date of purchase, Rajambal Ammal and her son Pachaiyappan have been in possession and enjoyment of the suit properties in their own right as absolute owners. Rajambal Ammal died in October 1978, leaving behind her husband, two sons and two daughters. After the death of Rajambal Ammal, her half share in the suit property devolved to defendants 2 to 6 in O.S.No.503 of 1983 and they are the husband and children of Rajambal Ammal.

14. One Basavanna Chowdhry appears to have obtained a money decree against defendants 2 and 3 in O.S.No.1/76 on the file of the District Munsif Court, Thiruvannamalai and brought the entire suit property for sale. But the share of Rajambal Ammal could not sold in the court auction. Rajambal Ammal was not one of the party in O.S.No.1/76. So, the decree and court sale is not binding on Rajambal Ammal.

15. Till her death, Rajambal Ammal alone was in possession and enjoyment of the suit property and her possession was not disturbed by the court auction purchaser.

16. The actual possession was always with Pacyaiyappan after the death of his mother Rajambal Ammal. So the court sale in favour of the Basavanna Chowdhry is not valid in respect of the half share in the suit property.

17. After the death of Rajambal Ammal, the defendants 2 to 6 (in O.S.No.503 of 1983) have succeeded the properties. The plaintiff in O.S.No.503 of 1983 viz., Samikannu had purchased the same from defendants 3 to 5. Defendants 2 to 6 are not in town. The 6<sup>th</sup> defendant has executed a Release Deed and the 2<sup>nd</sup> defendant has attested the document. So, the plaintiff/Samikannu is entitled to half share in the suit property and she is not aware of the court auction sale of Basavanna Chowdhry and so Viruthambal had filed the suit for half share in the suit property and also for mesne profits for past and future profits.

18. On comparison of the respective pleadings in both the suits, it is seen that according to the appellant/plaintiff/Viruthambal, she is a purchaser from Basavanna Chowdhri, who is a successful court auction purchaser on 13.09.1978; delivery was taken on 11.10.1979 in R.E.A.No.384 of 1979 and she had purchased the entire extent of the land from the court auction purchaser and hence, she is entitled for declaration to the entire extent.

19. Per contra, the sum and substance of the case of the first defendant namely, Samikannu (Plaintiff in O.S.No.503 of 1983) is that the suit property was standing in the name of Pachaiyappan and his mother Rajambal Ammal. Basavanna Chowdhri had filed a suit for recovery of money due from Krishnapillai and his son Pachaiyappan and for the said money decree, entire property was attached and sold in public auction after obtaining permission from the Court, however, the sale is made only in favour of Pachaiyappan and Rajambal Ammal, who is not a party to the suit and hence, the court auction was wrong footing treating the entire property as the property of Krishna Pillai and Pachaiyappan, while the property belongs to Pachaiyappan and

Rajambal Ammal, if at all, only 50% of the court auction purchase sale is valid.

20. Perused the schedule of the property.

21. Originally, the suit property was belonging to one Venu Pillai. Rajambal Ammal and her son Pachaiyappan had purchased the same under Ex.B1-Sale Deed. Rajambal Ammal's husband is Krishna Pillai, who is the second defendant in O.S.No.503/1983 and second respondent in A.S.No.17/1997. Her sons are defendants 3 & 4 in O.S.No.503/1983 and respondents 3 & 4 in A.S.No.17/1997 and daughters are defendants 5 & 6 in O.S.No.503/1983 and respondents 5 & 6 in A.S.No.17/1997. The relationship is not disputed.

22. The Trial Court/Second Additional District Munsif Court, Thiruvannamalai, on consideration of Ex.B.1-Sale Deed and also taking note of the fact that neither any independent witnesses were examined to show that Krishna Pillai had possessed the ancestral property at Nochimalai Village and nor filed any document to show that it is only self acquired property of Rajambal Ammal and Pachaiyappan, come to the conclusion that the suit property belongs to Rajambal Ammal and Pachaiyappan and Krishna Pillai has no right or title over the suit property and hence, based upon the above finding, both the Courts below have correctly come to the conclusion that since Rajambal Ammal is not a party to the suit in O.S.No.1 of 1976, instituted by Basavanna Chowdhri, the court auction sale as well as the delivery will not be binding upon the share of the Rajambal Ammal. So is the finding by the Appellate Court.

23. It remains to be stated that the said finding rendered by both the Courts below does not suffer from any irregularity or illegality, in view of the recital in Ex.B.1. The next contention that was urged by the learned counsel for the respondents before the Courts below is that Ex.A.4 is only a paper delivery and the same is acceptable. In this regard, though a plea was raised that the court auction purchaser Basavanna Chowdhri filed O.S.No.1165 of 1981 against Thangavelu Gounder and Balambal Ammal, however, the suit was settled out of Court but no document has been filed to show that the said proceedings was, admittedly on the date of purchase by the plaintiff, Rajambal Ammal was alive and hence, this Court finds that if at all any sale is effected by the court auction purchaser in respect of the decree granted in O.S.No.1 of 1976, it can be only to the extent of right and title of the judgment debtor and nothing more. In other words, the title of the judgment debtor alone can pass on to the court auction purchaser under the court auction and nothing more and accordingly, both the Courts below have correctly come to the conclusion that what

was Ex.A.4 is only a paper delivery. Since, had there been any physical delivery as claimed by the plaintiff, who is a purchaser from the court auction purchaser, there could not be any reason for him to file the suit in O.S.No.1165 of 1981 for recovery of possession of the suit property from Balambal Ammal and Thangavelu Gounder also assumes significance.

24. After perusing the documents, this Court finds that the court auction purchase was bind only upto the extent of share owned by Pachaiyappan but not that of Rajambal Ammal, who is not a party to the suit in O.S.No.1 of 1976 on the file of the District Munsif Court, Tiruvannamalai. From the evidence, it reveals that Rajambal Ammal had died intestate in October 1978. So her half share in the suit property was inherited by her legal heirs viz., her husband, two sons and two daughters. A Sale Deed was executed in favour of Samikannu/plaintiff in O.S.No.503 of 1983 on 05.03.1983 under Ex.B.2 for a sum of Rs.19,500/- by Pachaiyappan, Elumalai, Kuppammal and Pachaiyappan's minor son Raja. The husband of Rajambal Ammal was also attested in the said Sale Deed. One of the legal heir of Rajambal Ammal viz., Kasthuri had executed a Release Deed under Ex.B.3 in favour of Samikannu. So the Samikannu has filed a separate suit for partition in O.S.No.503 of 1983.

25. On a perusal of the Sale Deed executed in favour of the contesting parties, it is seen that the trial Court has taken note of the document Ex.A.3-Sale Deed dated 02.04.1983 while under Ex.B.2, it was executed on 05.03.1983, registered on 07.03.1983 and rightly came to the conclusion that only after the Sale Deed executed in favour of the first respondent herein/Samikannu, the appellant herein/Viruthambal has obtained the Sale Deed. Thus, from the above analysis as a summary of the evidence as could be seen from the oral and documentary, this Court comes to the conclusion that the entire property is absolutely belonging to Rajambal Ammal and Pachaiyappan; that Basavanna Chowdhri had obtained money decree as against Krishna Pillai and Pachaiyappan only and that the entire suit property was brought into court auction and the court auction sale was confirmed.

26. But that decree in O.S.No.1/1976 and a sale, including her share, will not bind, the half share of Rajambal Ammal. The said Rajambal Ammal died intestate leaving behind her legal heirs viz., respondents 2 to 5 in S.A.No.960 of 2000 and they inherited the same as per Hindu Succession Act 30 of 1956. So, they sold the property to the first respondent herein on 05.03.1986.

27. So, the appellant will not get title more than half share, than that of her vendor as had. The said Basavaanna

Chowdhri is legally entitled to half share in Survey No.69/3 only and hence, the appellant is entitled to only half share in the suit property.

28. The remaining half share is vested with the legal heirs of Rajambal Ammal and they sold the property to the first respondent herein/Samikannu and hence, he is entitled to half share in the suit property. So, the lower court has correctly held that Samikannu is entitled to half share in the suit property and Viruthambal is entitled to remaining half share in the suit property and thus, both the Courts below, on proper appreciation of facts, have rightly come to the conclusion that the entire suit property in the above said suit in O.S.No.385 of 1983 is self acquired property of Rajambal Ammal and Pachiyappan and the suit filed by the Basavanna Chowdhri binds only the son of Pachaiyappan and not the Rajambal Ammal and she is not a party to the suit and the court auction purchaser cannot get title more and better than the judgment debtor. Hence, the findings rendered by both the Courts below in this regard do not suffer from any irregularity or illegality warranting interference at this second appeal stage.

29. Mr.M.V.Venkataseshan, learned counsel appearing for the appellant would draw my attention to the proceedings that there is no challenge in the court auction and the trial Court has committed an error in refusing the court auction sale.

30. This Court, by order dated 05.06.2020, in S.A.No.1178 of 2005, at para No.11 has held as follows:-

"11. where the Court auction sale as evidence by Ext.B-1 sale requires a place to be fitted in. Primarily, a court auction sale does not carry a warranty of title. And, hence, when the title of the property sold in court-auction is challenged, then the burden is on one who asserts that the judgment-debtor whose property was brought to sale, had title to the property when the property was sold in court-auction. This is essence shifts the burden on the defendants who rely on Ext.B-1 to show that Rajalingam (son of the original owner Gopala Padayachi), had title to the entire 92 cents in S.No:227/4B when the property was sold in Court auction." (emphais supplied)

31. It remains to be stated that when the judgment debtor is having only 50% of the share in the suit property, the court auction purchaser cannot get more than what the judgment debtor's share in the suit property and hence, I find that based upon the document Ex.B.1-Sale Deed, which was jointly purchased by the son and mother and the court auction certificate-Ex.A.1

is valid only to the limited extent of the judgment debtor's share and accordingly, both the substantial questions of law agitated by the learned counsel for the appellant are answered in negation against the appellant, on the facts and circumstances of the case, as the questions of law do not arise for consideration. The Second Appeal is devoid of merits and the same is liable to be dismissed.

32. In the result,

[i] Both the Second Appeals are dismissed and the common judgment and decree dated 11.06.1999, passed by the learned Additional District Judge, Thiruvannamalai, in A.S.Nos.17 and 18 of 1997 respectively, confirming the judgment and decree dated 29.11.1996 passed by the learned Second Additional District Munsif, Thiruvannamalai, in O.S.Nos.503 and 385 of 1983 respectively, are confirmed. No costs.

Sd/-  
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

Jrl

To

1.The Additional District Judge,  
Thiruvannamalai.

2.The Second Additional District Munsif,  
Thiruvannamalai.

Copy To

The Section Officer,  
V.R.Section,  
High Court, Madras.

+1cc to Mr.M.V.Venкатaseshan, Advocate, S.R.No.21405

+2ccs to M/s.R.Karthikeyan, Advocate, S.R.No.22218, 22219

S.A.Nos.960 & 961 of 2000

AJS (CO)  
RVM(22/11/2021)