



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.11.2021

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

S.A(MD)No.703 of 2009

and

M.P(MD)No.1 of 2009

R.Ramalakshmi Ammal ... Appellant/Appellant/2nd Defendant

Vs.

- 1.Thiruvarangathammal  
through her power agent  
S.Maruthaiah Thevar ... 1st Respondent/1st Respondent/Plaintiff
- 2.Anthonisami
- 3.Alaguduraichi ... Respondents 2 & 3/Respondents 2 & 3/  
Defendants 1 & 3

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 31.03.2009 passed in A.S.No.28 of 2007, on the file of the Principal Subordinate Court, Tenkasi, confirming the judgment and decree dated 04.08.2006 passed in O.S.No.558 of 2005 on the file of the Additional District Munsif Court, Tenkasi.

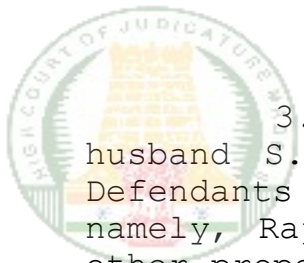
For Appellant : Mr.D.Srinivasa Raghavan

For Respondents : Mr.M.Mohamed Ibram Saibu  
for M/s.Ajmal Associates - R1 & R2  
Given up - R3

### JUDGMENT

The concurrent Judgments and decrees passed in O.S.No.558 of 2005 by the Additional District Munsif Court, Tenkasi and in A.S.No.28 of 2007, by the Principal Subordinate Court, Tenkasi, are being challenged in the present second appeal.

2. The first respondent / plaintiff has instituted a suit in O.S.No.558 of 2005, on the file of the trial Court for the relief of permanent injunction, wherein, the present appellant has been shown as the second defendant.



3. In the plaint, it is averred that the plaintiff's husband S.Maruthiah Thevar as the power agent of the plaintiff. Defendants 2 and 3 are the daughters of the plaintiff's brother namely, Raja @ Periyasami Thevar. The suit schedule property and other properties are originally belonged to one S.K.Ramasamy Thevar, who is the father of the plaintiff and her elder brother namely, Raja @ Periyasami Thevar. After the death of her father, an oral partition was entered into between the plaintiff and her brother and that a registered partition deed, dated 07.07.1976 was entered into between them and that the fifth schedule property mentioned in the registered partition deed, which is the subject matter of the present suit, was allotted to the plaintiff and she is in possession and enjoyment of the same, from then. The second defendant/ present Appellant had filed a suit in O.S.No.213 of 2003 impleading the plaintiff as fourth defendant and that the plaintiff then only came to know that only limited interest alone has been given to her in the suit schedule property and the suit filed by the second defendant was dismissed and that the appeal in A.S.No.133 of 2004 filed against O.S.No.213 of 2003 was also dismissed. Hence, the suit was filed for permanent injunction.

4. In the written statement filed on the side of the second defendants, there are several deeds registered in the Pavoorchatram Sub Registrar Office with respect to the suit schedule property and the claim of the plaintiff has become infructuous and that the relief as claimed by the plaintiff is not maintainable. The second defendant denied the false contentions of the plaintiff and therefore, prayed for dismissal of the suit.

5. Before the trial Court, on the side of the plaintiff, the plaintiff's power agent examined himself as P.W.1 and Exs.A1 to A7 were marked. On the side of the defendants, one Ramaiah was examined as D.W.1 and Exs.B.1 to B.6 were marked.

6. On the basis of the rival pleadings on either side, the trial Court, after framing necessary issues and after evaluating both the oral and documentary evidence, has decreed the suit in favour of the first respondent / plaintiff.

7. Aggrieved by the Judgment and decree passed by the trial Court, the first defendant as appellant, had filed an Appeal Suit in A.S.No.28 of 2007. The first appellate Court, after hearing both sides and upon reappraising the evidence available on record, has dismissed the appeal and confirmed the Judgment and decree passed by the trial Court. Challenging the said concurrent Judgments and decrees passed by the Courts below, the present second appeal has been preferred at the instance of the first defendant, as appellant.

8. While admitting the Second Appeal, the following substantial questions of law have been framed for consideration :-

1) Whether the Courts below are right in holding the

<https://hcservices.ecourts.gov.in/hcservices/> is entitled for decree of permanent



injunction when there is no proof or evidence to show that the defendants are not interfering with the position or admitting to sale of the property and they have only vested interest ? and

2) Whether the Courts below are right in granting a decree of permanent injunction permitting the plaintiff who is not in a position that 40% of the property is already plotted and sold by the first defendant ?

9. Heard the learned counsel for the appellant and the learned counsel for the respondents and also perused the materials available on record.

10.The second appeal has been filed for setting aside the judgment and decree, dated 31.03.2009 passed in A.S.No.28 of 2007 by the Principal Subordinate Court, Tenkasi, confirming the judgment and decree of the trial Court in O.S.No.558 of 2005. dated 04.08.2006 by the Additional District Munsif Court, Tenkasi.

11.The Appellant submits that the Courts have granted relief of injunction as prayed for by the plaintiff, even after holding that the plaintiff is only having limited interest over the suit schedule properties as per Exs.A.1, A.3 and Exs.B.7 and B.8 and the said interest is only for limited interest, for life. If life interest has been given to her and the appellant, the second respondent shall not disturb her possession regarding the said house property alone. The limited interest till her life time was only granted and hence, the appeal suit has also been decided in favour of said Thiruvarangathammal.

12.Now learned counsel for the appellant submit that connected Second Appeal in S.A.(MD)No.661 of 2007 filed by Thiruvarangathammal as appellant / first defendant. The appellant counsel namely, one Ramesh @ Ramiah had informed the Court that the sole appellant passed away and the legal heirs are not interested to come on record and the Second Appeal is dismissed as abated. This Second Appeal has been filed by the second defendant alone and submits that as the life interest alone has been given to Thiruvarangathammal and the said Thiruvarangathammal is no more, the life interest become abated and the other question relating to the sharing of the property between the legal heirs of the said Thiruvarangathammal brother's children will be sort out by them in a separate proceedings or amicably.

13.In view of the above said submission made by the learned counsel for the appellant, who has produced the death certificate issued on 22.09.2014 by the Executive Officer & Birth & Death Registration, Keelapavoor Town Panchayat, which proves that the said Thiruvarangathammal is no more. This Court is of the view that the Second Appeal need not be pursued further and the Second Appeal can



be disposed of with the aforesaid findings and it is left open to the parties to work out their remedy in the manner known to law, if any dispute arises. The substantial questions of law are ordered accordingly.

14. With the above observations, the Second Appeal is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS II)

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/ /2021

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Principal Subordinate Judge,  
Tenkasi.

2.The Additional District Munsif,  
Tenkasi.

3.The Record Keeper,  
V.R. Section,  
Madurai Bench of Madras High Court,  
Madurai.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate ( SR-35509[F] dated 23/11/2021 )

+1 CC to M/s.D. SRINIVASARAGAVAN, Advocate ( SR-35483[F] dated 23/11/2021 )

**S.A(MD)No.703 of 2009**  
**22.11.2021**

MGJ(16.12.2021) 4P 7C