



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.08.2021

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

S.A. (MD) Nos.50 & 51 of 2012

**In S.A. (MD)No.50 of 2012**

1. Thirumoorthy @ Duraisamy
2. Shanmugam
3. Samikannu
4. Chandran

... Appellants / Appellants / Plaintiffs

Vs

- 1.Chinnaponnnan @ Arumugamn (Died)
2. Saroja

... Respondents / Respondents / Defendants

(Appellants 1 to 4 are recorded as Lrs of the deceased R1 as per memo in USR No.868/12 dated 02.03.2012 is recorded vide order dated 21.03.2012)

**Prayer:** Second appeal filed under Section 100 of C.P.C., against the judgment and decree dated 27.09.2011 made in A.S.No.24 of 2010 on the file of Additional District Judge cum Fast Track Court, Dindigul, confirming the judgment and decree dated 12.01.2010 made in O.S.No.435 of 2003 on the file of Sub Court, Palani.

For Appellants : Mr.R.Vijayakumar,  
For R2 : Mr.S.Rajasekar

**In S.A. (MD)No.51 of 2012**

- 1.Chandran
- 2.Samikannu
- 3.Duraisamy

... Appellants / Appellants / Defendants 2 to 4

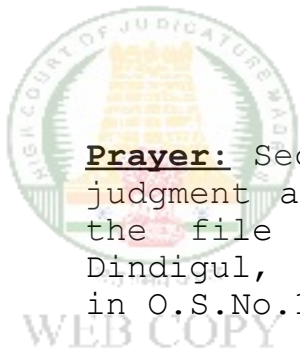
Vs

- 1.Saroja
- 2.Chinnaponnnan @ Arumugamn (Died)

... Respondent / 1<sup>st</sup> Respondent / Plaintiff

... Respondents / 2<sup>nd</sup> Respondent / 1<sup>st</sup> Defendant

(Appellants 1 to 3 are recorded as Lrs of the deceased R2 as per memo in USR No.869/12 dated 02.03.2012 is recorded vide order dated 21.03.2012)



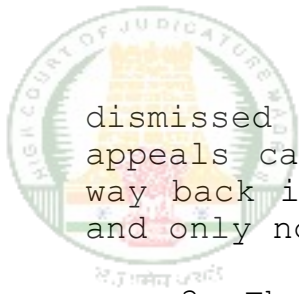
**Prayer:** Second appeal filed under Section 100 of C.P.C., against the judgment and decree dated 27.09.2011 made in A.S.No.25 of 2010 on the file of Additional District Judge cum Fast Track Court, Dindigul, confirming the judgment and decree dated 12.01.2010 made in O.S.No.196 of 2008 on the file of Sub Court, Palani.

For Appellants : Mr.R.Vijayakumar,  
For R1 : Mr.S.Rajasekar

**COMMON JUDGMENT**

These second appeals are inter-connected. The appellants herein filed O.S.No.435 of 2003 on the file of the Sub Court, Palani seeking preliminary decree declaring that each of the plaintiffs are entitled to 1/5<sup>th</sup> share in the suit properties.

2. It is a suit for partition. The plaintiffs had arrayed their father as first defendant and their aunt as second defendant. The suit properties are comprised in two schedules namely 'A' and 'B'. 'A' schedule properties are ancestral properties. The plaintiffs would contend that apart from the agricultural income from 'A' schedule properties, the first defendant did not have any other source of income. The second defendant is the sister of the first defendant and they had purchased 'B' schedule properties out of the income generated from the 'A' schedule properties. While so, the first defendant executed a sale deed-Ex.B5 dated 22.08.2003 conveying his ½ share in schedule 'B' properties in favour of the second defendant. The plaintiffs would contend that this sale can be valid only to the extent of the first defendant's 1/5<sup>th</sup> share in schedule 'B' property and that it cannot bind the plaintiffs. With these averments, while the plaintiffs filed O.S.No.435 of 2003 seeking partition, the second defendant filed O.S.No.196 of 2008 seeking permanent injunction. Both the suits were tried together. The father of the appellants remained exparte. The second defendant in O.S.No.435 of 2003 filed written statement controverting the plaint averments. Likewise, the appellants herein filed written statement contesting the prayer for permanent injunction. Based on the divergent pleadings, the trial court framed the necessary issues. The 3<sup>rd</sup> plaintiff Samikannu examined himself as P.W.1. Ex.A1 to Ex.A4 were marked. The second defendant Saroja examined herself as D.W.1. One Thangavel was examined as D.W.2. Ex.B1 to Ex.B7 were marked. After consideration of the evidence on record, the trial court by judgment and decree dated 12.01.2010 granted preliminary decree only in respect of 'A' schedule properties. As regards 'B' schedule properties, the trial court dismissed the suit. Aggrieved by the same, the plaintiffs filed A.S.Nos.24 & 25 of 2010 before the Additional District Judge cum Fast Track Court, Dindigul. By the impugned judgment and decree dated 27.09.2011, the first appellate court confirmed the decision of the trial court and



dismissed both the appeals. Challenging the same, these second appeals came to be filed. Though these second appeals were filed way back in the year 2012, till date, they have not been admitted and only notice was ordered.

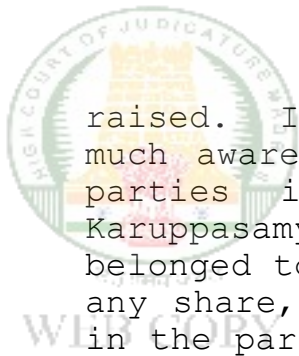
3. The learned counsel appearing for the appellants reiterated the contentions set out in the memorandum of grounds and called upon this Court to frame the substantial question of law and admit these appeals and then, take them up 'for disposal'.

4. Per contra, the learned counsel appearing for the contesting respondents submitted that the impugned judgments and decrees do not call for any interference.

5. I carefully considered the rival contentions and went through the evidence on record.

6. As already pointed out, the contest is only regarding 'B' schedule properties. The 'B' schedule properties were purchased in the joint names of the first defendant and the second defendant under Ex.B1-sale deed dated 21.10.1999. Later, the first defendant executed a sale deed-Ex.B5 dated 22.08.2003 conveying his  $\frac{1}{2}$  share in 'B' schedule item. The suit was filed on 25.11.2003. The only question that arises for consideration is whether Ex.B5-sale deed is valid? There cannot be any dispute that the first defendant as the kartha of the joint family had the power to alienate the joint family property. The alienation has to be for family necessity and such alienation would bind the interests of all the undivided members of the family whether they are adults or minors **((2008) 16 SCC 785 (Baljinder Singh Vs. Rattan Singh))**

6. The second defendant in her written statement had pleaded that her son Raj had advanced a sum of Rs.60,000/- as loan to the first defendant and only with that amount, 'B' schedule property was purchased under sale deed dated 21.10.1999. The first defendant was unable to repay the said loan. Thereafter, for family expenses and to liquidate sundry deposit, a further sum of Rs.40,000/- was received from the first defendant. Instead of repaying the said amount, the first defendant sold his  $\frac{1}{2}$  share in schedule 'B' items under sale deed-Ex.B5 dated 22.08.2003. According to the second defendant, Ex.B5-sale deed was executed for due consideration. The second defendant pleaded that the first defendant alienated 'B' schedule property only for family necessity. The second defendant also marked Ex.B3 and Ex.B4 and it can be seen therefrom that the fourth appellant Chandran had borrowed money from one Karupphasamy who filed O.S.No.402 of 2002 on the file of the Sub Court, Palani. He also filed I.A.No.855 of 2002 and attached the suit properties. In I.A.No.1235 of 2002, it was found that the schedule 'B' items belonged to the defendants herein in their independent capacity and hence, attachment effected in respect of schedule 'B' properties was



raised. It is safe to assume that the plaintiffs 1 to 3 were very much aware of the said finding as well as the stand taken by the parties in O.S.No.402 of 2002 filed by the said creditor Karuppasamy. If in a third party suit, schedule 'B' property belonged to the defendants only and that the appellants did not have any share, the character of the said property will remain the same in the partition suit filed by the appellants also. The  $\frac{1}{2}$  share of the 1<sup>st</sup> defendant will not now acquire a joint family character. In these circumstances, the courts below came to the conclusion that the schedule 'B' properties are the self acquired properties of D1 and D2 and that the first defendant can very well convey his  $\frac{1}{2}$  share to the second defendant. This is a pure finding of fact and it is not erroneous or un-sustainable. No substantial question of law arises for consideration.

7. Both the second appeals stand dismissed. No cost.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

rmi

**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 Additional District Judge cum Fast Track Court, Dindigul.
- 2.The Subordinate Judge, Palani.

Copy to

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

+1 CC to M/s.T.LAJAPATHI ROY, Advocate ( SR-26032[F] dated 12/08/2021 )  
+1 CC to M/s.R.VIJAYAKUMAR, Advocate ( SR-26279[F] dated 13/08/2021 )

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RK(02/06/2022) 4P 7C

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