



S.A.No.536 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.09.2022

Delivered on : 11.11.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.536 of 2021
&
C.M.P.No.11192 of 2021

A.Manoharan

Vs

...Appellant

1.Aruputha Mery

2.Kalaimani

3.Selvarani

4.Mery

5.Rajam

6.Samathanam

7.Ramani

8.Selvi

9.Rajesh

...Respondents



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Prayer: Second Appeal is filed under Section 100 of the CPC against the Judgement and Decree dated 30.11.2020 made in A.S.No.14 of 2013 on the file of the Ld. Principal Sub Court, Kallakurichi, reversal of the Judgement and Decree dated 28.09.2011 made in O.S.No.824 of 2004 on the file of the III Additional District Munsif Court, Kallakurichi.

For Appellant : Mr.N.Manoharan

For Respondents : No Appearance

JUDGMENT

The plaintiff whose decree for partition granted by the III Additional District Munsif, Kallakurichi, which has been reversed by the Principal Sub Judge, Kallakurichi is the appellant before this Court. The facts giving rise to the above Second Appeal is herein below narrated. In the course of this narration, the parties are referred to in the same ranking as before the Trial Court.



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Plaintiff's Case:

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2. The plaintiff has filed the above suit for partition and separate possession of his 19/64th share in the suit schedule property.

The suit schedule property consists of two items of property.

I. The A - Schedule is an extent of 3.22 Acres comprised in S.No.175/2 in Ithili Village, Kallakurichi, bounded on the East by Ayyavoo's land, North by Murugan's land, South by Chinnu's land and West by Ramalingsm's land.

II. The B – Schedule property consists of three items of properties:

All in the Ithili Village, Kallakurichi. The 1st item is an extent of 0.01.0 Ares comprised in S.No.160/67. The other properties are same extent in S.No.160/81 and S.No.159/4.



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3. It is the case of the plaintiff that his father Asirvatham had married his mother Kannammal @ Veerakannu as per Christian Rites and Customs on 15.07.1942. Through this wedlock, the plaintiff and the 6th defendant were born to them. On 27.05.1974, the said Asirvatham had obtained the A-Schedule property from the Harijan Land Occupant Society under possession agreement, in which he was required to cultivate the lands and thereafter obtain patta from the Government.

4. It is the case of the plaintiff that from 1974, the B – Schedule property was also enjoyed as family properties. It is the case of the plaintiff that the said Asirvatham had started living with the 1st defendant 20 years ago, through which 2nd to 5th defendants and one Samadhanam were born. The said Samadhanam had left the house and his whereabouts are unknown and he is assumed to have a civil death.



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5. It is the further case of the plaintiff that he is a Teacher in the Government School and the 6th defendant is working as a Conductor in the State Transport Corporation. The said Asirvatham is also a Teacher and after his retirement he was taking care of the suit properties. On 24.07.1992, the said Asirvatham had died intestate leaving behind him surviving the plaintiff and the defendants. The 1st defendant was permitted to receive the terminal benefits, which the plaintiff and his mother had voluntarily given up. After the death of Kannammal @ Veerakannu, the plaintiff had left the management of the properties to the defendants.

6. It is the case of the plaintiff that till the year 2000, he was receiving the share of the produce from the lands and thereafter it had stopped coming. Now considering the fact that there is no possibility to continue in joint possession, the plaintiff has come forward with the above suit.



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The 1st Defendant's case:

7. The 1st defendant has filed a written statement inter alia denying the marriage between the said Asirvatham and Kannammal @ Veerakannu. The 1st defendant would state that she is the only wedded wife of Asirvatham. The 1st defendant has married him as per Christian Rites and Customs, through which defendants 2 to 5 and one Samadhanam were born. It is the case of the 1st defendant that the A and B - Schedule properties had been assigned to defendants 1 to 3 and DKT patta has been issued to them and that they are enjoying the properties separately. The I - Item of the B-Schedule property has been allotted to the share of the 1st defendant. The II - Item to the 2nd defendant and the III - Item to the 3rd defendant.

8. It is the case of the 1st defendant that the plaintiff and defendants 4 to 6 have no right or interest in the property. Further,



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the 1st defendant would also contend that her son Samadhanam also had no right to the property.

9. The 1st defendant would state that in the year 1969, the said Asirvatham retired, then in the year 1972 he had fallen sick and was bed ridden till his death. The 1st defendant would contend that during the entire period, it was only she who was taking care of the said Asirvatham. The plaintiff who is from Thirukoilur had requested the 1st defendant to sell the A- Schedule property to enable him to put up an industry and he has sought the B-Schedule property as a store room. The 1st defendant had refused and therefore angered by the same, the plaintiff has come forward with the present suit.

Trial Court:

10. The learned III Additional District Munsif, Kallakurichi had framed the following issues:

1.வாதி தாவாவில் கோரிய படி பாகம்



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பெற உகந்தவரா?

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2.வாதிக்கு வழக்கில் கிடைக்கும் பரிகாரம் என்ன?

11. The learned III Additional District Munsif, Kallakurichi had on 26.09.2011 had framed the following additional issues:

3.கண்ணம்மா என்ற வீரகண்ணா,
ஆசீர்வாதத்தின் சட்டப்படியான மனைவியா?

4.தாவா சொத்துக்கள் ஆசீர்வாதம்
என்பவருக்கு அனுபவம் மற்றும் பாத்தியப்பட்ட
சொத்துக்களா?

5.தாவா சொத்து விபரம் சரியாக
குறிப்பிடப்பட்டுள்ளது?

12. The plaintiff has examined himself as P.W.1 and marked Ex.A.1 to Ex.A.20. The 2nd defendant had examined herself as D.W.2 and marked Ex.B.1 to Ex.B.2. The 1st defendant has chosen not appear before the Court.



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13. The Trial Court on considering the evidence both oral and documentary, came to the conclusion that the said Asirvatham had married the plaintiff's mother as evidenced by Ex.A.1. The learned III Additional District Munsif, Kallakurichi, has also relied upon the evidence of P.W.2, to arrive at a conclusion that the plaintiff's mother is the legally wedded wife of the said Asirvatham.

14. The learned III Additional District Munsif, Kallakurichi, had also taken into account that there is no evidence adduced by the defendants to prove the marriage of their mother, the 1st defendant with the said Asirvatham. Ex.B.2 alone would show that the defendants 1 to 5 and the 7th defendant are his legal heirs. The learned III Additional District Munsif, Kallakurichi had on the basis of the evidence held that the marriage which has been held between the deceased Asirvatham and Arpudhamarry did not take place as



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per Christian Rites.

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15. The learned III Additional District Munsif, Kallakurichi has relied upon Ex.A.1 and the Judgement reported in ***AIR 1996 Cal 301 – Dr.Ranjit Kumar Bhattacharrya Vs. Smt.Sabita Bhattacharrya***, to return a finding that Kannammal @ Veerakannu is a legally wedded first wife of the deceased Asirvatham.

16. The learned III Additional District Munsif, Kallakurichi has also held that Ex.B.14 to Ex.B.16, which are pattas which stand in the name of the 1st, 2nd and 3rd defendant in respect of the I -Item to III - Item, respectively have been issued just after the filing of the suit. The learned III Additional District Munsif, Kallakurichi further observed that no documents prior to 2005 has been filed by the defendants, on the contrary, the plaintiff has produced Adangal for Fasli year 1386 to 1402 and therefore had come to the conclusion



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that the plaintiff is entitled to the partition as claimed.

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17. Challenging the said Judgement and Decree, the defendants have filed an appeal in A.S.No.14 of 2013.

Lower Appellate Court:

18. The Lower Appellate Court however reversed the Judgement and Decree on the ground that the patta in favour of the defendants 1 to 3 had been granted in the year 2002 and that no pattas have been produced by the plaintiff. Further, the marriage certificate Ex.A.1 is not true.

19. The learned Principal Sub Judge, Kallakurichi had also come to the conclusion that there is no document to correlate that the said Kannammal and Veerakannu are one and the same. Further, the learned Principal Sub Judge, Kallakurichi, went on to hold that



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the plaintiff has not proved that he has born to Asirvatham and Veerakannu.

20. The learned Principal Sub Judge, Kallakurichi, observed that the possession continues to be with the defendants, which only goes to show that Ex.A.15 was not maintainable. Under Ex.A.15, though the reference is that the lands have been cultivated by Asirvatham, the learned Principal Sub Judge, Kallakurichi has brushed aside the same by contending that the document does not show the ownership is with the said Asirvatham.

21. The learned Principal Sub Judge, Kallakurichi had observed that only on the basis of Ex.A.2 and Ex.A.15, it cannot be deemed as the property belonged to the said Asirvatham. The learned Principal Sub Judge, Kallakurichi further held that the possession was with the defendants.



22. Challenging the said Judgement and Decree, the plaintiff is the appellant before this Court. The above Second Appeal is admitted on the following Substantial Questions of Law:

“(a) Whether the learned First Appellate Court is right in dismissing the suit for partition by sustaining the objection raised by the defendants 1 to 5 as to the status of the plaintiff, especially when there is no contra evidence to Ex.A1 to Ex.A4?

(b) Has not the First Appellate Court erred in non-suiting the plaintiff on the allegation of discrepancies in the suit schedule, when the suit property is well identifiable as required under Order 7 Rule 3 CPC?

(c) Whether the judgment of the learned First Appellate Court is perverted and vitiated in holding that the suit properties were not assigned to late Ashirvatham, particularly when there is no dispute



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between the parties in tracing their right and title through the said late Ashirvatham?”

23. All the respondents were served and it was only the 3rd respondent who had entered appearance through counsel. However, despite granting time, the learned counsel for the 3rd respondent had not appeared.

24. The learned counsel for the 3rd respondent has not appeared for all the hearings from July 2022 and finally on 20.09.2022, the matter was adjourned to 27.09.2022 under the caption “*For Orders*”. It was made clear that even if the learned counsel for the 3rd respondent was not present, the matter will be heard. Accordingly, the matter was called on 27.09.2022 but there was no representation for the respondents and the learned counsel for the appellant has made his submissions.



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Submissions:

25. Mr.N.Manoharan, learned counsel appearing on behalf of the plaintiff would submit that the plaintiff had proved the marriage between the said Asirvatham and Kannammal @ Veerakannu by filing Ex.A.1. The said document is of the year 1942 and is a true copy of the extract issued by the Church. In addition to Ex.A.1, the plaintiff has also filed Ex.A.3, which is the birth certificate of the plaintiff of the year 1943. Further, the marriage invitation of the plaintiff, as also the marriage registration certificate has been marked as Ex.A.4. Both in the birth certificate as well as in the marriage invitation, it has been clearly stated that the plaintiff is the son of the said Asirvatham. On the contrary, there is absolutely no document to show that the 1st defendant is the wife of the said Asirvatham.

26. The learned counsel would submit that D.W.2 in her



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evidence admits that the marriage between her mother, the 1st defendant and her father had not taken place as per Christian Rites and Customs but by exchange of Betel leaves, a form of marriage alien to Christians. The learned counsel would therefore submit that in the light of the aforesaid exhibits, the fact that the plaintiff and the 6th defendant are the children of Asirvatham through his wife Kannammal @ Veerakannu stands proved.

27. In this aspect, the learned counsel would rely up on the Judgement of the Calcutta High Court reported in ***AIR 1996 Cal 301 – Dr.Ranjit Kumar Bhattacharyya Vs. Smt.Sabita Bhattacharyya***, which has also been followed by the Trial Court, wherein, the plaintiff wife had contended that she was the legal wife of the defendant, the marriage having been solemnised according to the Hindu Rites and Customs and they living as husband and wife for an extended period of time. The defendant husband had denied the said contentions and stated that the impleaded party was his legally



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wedded wife and not the plaintiff. The defendant had also contended that he and the impleaded party being Christians, the marriage have been solemnised in the Church as per Christian Rites and Customs. To prove the same, the marriage certificate had been marked on his side. The learned Judge has accepted the said Exhibit which has been produced from the proper custody.

28. The learned counsel would therefore contend that once the relationship has been proved, the next question that has to be considered is whether the plaintiff is entitled to the share in the suit schedule property. The learned counsel would submit that Ex.A.2, is an agreement entered into between Asirvatham and Harijan Land Occupant Society, formed by the Government to provide housing sites to the people from the deprived classes. The Society now had been dismantled. However, the conveyance effected by them under Ex.A.2, is valid and the same relates to the A-Schedule property.



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29. The learned counsel would submit that the plaintiff had filed the Adangal and Chitta to prove the possession of the said Asirvatham to the suit schedule property. That apart, the plaintiff has challenged the grant of patta to the defendants and the same had not been proceeded with since the RDO had directed the parties to approach the Court for settling their disputes.

30. The learned counsel would further submit that the patta which has been granted in the name of the defendants 1 to 3 are post the filing of the suit. This would clearly show that they have no exclusive right, title and interest to the property particularly when the same stood in the name of Asirvatham and continued in his name till the change of patta.

31. The learned counsel would submit that the plaintiff has not denied the relationship of the 1st defendant to the said Asirvatham. Further, the learned counsel would submit that on the death of his



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father, namely Asirvatham, the plaintiff and the defendants enjoyed an equal share in the property. However, defendants 1 to 3 seek to have an exclusive right to the property.

32. The learned counsel would submit that till the death of the said Asirvatham, the revenue records stood in his name and it is only in the year 2005 that the defendants have clandestinely got the patta transferred to their name. The learned counsel would submit that the Lower Appellate Court has set aside the well reasoned Judgement and Decree of the Trial Court on very ingenuous grounds.

33. The learned counsel would submit that Ex.A.1 has not been considered on ground that the said Asirvatham has been described as a widower, whereas the plaintiff's contention is that his mother is the first wife. Secondly, on the ground that there was no document to show the said Veerakannu and Kannammal were one and the same. The learned Principal Sub Judge, Kallakurichi, has



simply considered the patta to arrive at the conclusion that the plaintiff was not entitled to partition as the property belonged to the defendants 1 to 3, totally failing to consider the fact that the plaintiff had produced documents to show that the properties, were originally enjoyed by Asirvatham till his death and therefore as his legal heir the plaintiff was entitled to the share in the same.

Discussion:

34. The issue to be considered in the above suit for partition for answering the Substantial Questions of Law are as follows:

(a) Whether the plaintiff has proved that he is the son of Asirvatham, through his wife Kannammal @ Veerakannu?

(b) Whether the suit properties were the properties of the said Asirvatham at any point of time and being his legal heirs, the plaintiff is entitled to the share in the same?



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WEB COPY 35. The plaintiff has come forward with the case that one Asirvatham, his father had married his mother Kannammal @ Veerakannu on 15.07.1942 as per Christian Rites and Customs. To prove the same, Ex.A.1, the extract of the marriage registration certificate has been filed by the plaintiff. This extract has been taken from the Danish Mission Church, Bethosther, Kallakurichi, which is now called the Arcot Lutheran Church, Kallakurichi.

36. The details of the marriage register would show that one Asirvatham son of Chinnasamy and one Veerakannu, daughter of Challan had got married on 15th July 1942, a Wednesday. The groom has been described as a widower aged 31 years and a Teacher. The address of the groom is given as Kallakurichi. The bride on the other hand would describe as a Spinster aged about 21 years and not employed and her address is given as Savarimedu, Thirukoilur. The extract has been issued by the Pastor of the said Church from the



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Original Marriage register. Therefore, the document would clearly show that Asirvatham had married Veerakannu on the date given in the extract.

37. Ex.A.3, is the birth certificate of the plaintiff of the year 1943. The date of the birth is given as 22.07.1943. The father's name is described as Asirvatham, son of Chinnasamy and he is described as a Teacher. The mother's name is shown as Kannammal and the address is Kallakurichi. The Birth certificate, no doubt shows the plaintiff's mother's name as Kannamal but the name of the father is the same as in extract Ex.A.1. Therefore, it is clear that the plaintiff has been born to the two of them, i.e., Asirvatham and Veerakannu @ Kannammal. The plaintiff is born within a year of their marriage.

38. The next document is the marriage invitation of the plaintiff and the extract from the marriage register which has been



marked as Ex.A.4. A perusal of the same would show that the groom, namely, the plaintiff, is described as the son of Asirvatham having his residence as Savarimedu, Thirukoilur, which appears to be the same address as that of his mother.

39. Another document which would add strength to the contention of the plaintiff that Ex.A.1 relates to his father is evident from Ex.B.14. In Ex.B.14, which is an application for pension made by Asirvatham himself, he has given his date of birth as 07.04.1911. Therefore, on the date of marriage of the said Asirvatham with Veerakannu on 15.07.1942, he would be 31 years. A perusal of Ex.A.1, register of book of marriage would show that the groom, namely, Asirvatham was aged about 31 years. Therefore, on a cumulative reading of these documents, it can be naturally concluded that the plaintiff is the son of Asirvatham and Veerakannu, who is also known as Kannamal as is evident from a perusal of Ex.A.3, birth certificate. In her death certificate Ex.A.13,



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she has been described as the wife of Asirvatham and her name is shown as Kannammal. The legal heirship certificate, Ex.A.14 would also demonstrate the above.

40. The learned Principal Sub Judge, Kallakurichi, has rejected the contention of the plaintiff only on the ground that the said Asirvatham has been described as a widower, whereas, the plaintiff would state that his mother is the first wife. Further, there is no proof to show that Veerakannu and Kannammal are one and the same person. As narrated above, the plaintiff's father is Asirvatham son of Chinnasamy of Kallakurichi and a Teacher by profession. The fact that Veerakannu and Kannammal are one and the same is evident from Ex.A.1, Ex.A.3, Ex.A.4, Ex.A.13 and Ex.A.14.

41. The next issue is with reference to whether the plaintiff is entitled to partition as the property belongs to Asirvatham. The plaintiff has filed Ex.A.2, agreement which shows that the A -



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Schedule property has been allotted to the said Asirvatham, giving him the right to cultivate the land and collect its produce. The agreement would further state that the agreement holder could put up his residence in the said lands and apply for patta. The description of this property tallies with the A-Schedule of the suit schedule. The said Asirvatham is described as the son of Chinnasamy as described in Ex.A.1, Ex.B.1, Ex.B.2 and Ex.B14. Therefore, the person described in Ex.A.2 is the very same Asirvatham.

42. Ex.A.15 which covers Fasli 1386 to 1402 shows the property in S.No.175/2, stands in the name of Asirvatham. The defendants have produced Ex.B.4, Ex.B.5 and Ex.B.6, assignment pattas, which does not relate to S.No.175/2, but in respect of S.No.175/6, S.No.175/7 and S.No.175/8 as also in Ex.B.15 to Ex.B.17. Therefore, the 1st defendant has not produced any document to show that they have been assigned patta in respect of



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S.No.175/2.

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43. Considering the fact that the agreement had been entered into in favour of Asirvatham, in respect of S.No.175/2, which is the A-Schedule property and considering the fact that he had died intestate, the plaintiff being his legal heir is entitled to the share in the same.

44. With reference to the B-Schedule property, which consists of land situate in S.No.160/67, S.No.160/81 and S.No.159/4, the case of the plaintiff is that Asirvatham was enjoying the property as a family property. However, there is no proof to support this contention. In Adangal extract, Ex.A.15, it is only the property that comprised in S.No.175/2 which is shown as property belonging to the said Asirvatham. However, the land situate in S.Nos.159 and 160 are shown as Harijan colony.



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45. Ex.B.15 to Ex.B.17 produced on the side of the defendants are the pattas issued in respect of the B - Schedule property standing in the name of the defendants 1 to 3. Therefore, since the plaintiff has not proved the enjoyment or right to the above property, he is not entitled to partition in respect of the B-Schedule property.

46. Therefore, Substantial Questions of Law are answered in favour of the plaintiff in so far as it relates to S.No.175/2, which is the A – Schedule property and in favour of the defendants in respect of the B-Schedule property.

47. In the result, the Second Appeal is partly allowed. The Judgement and Decree of the Sub Court, Kallakurichi, in so far as it relates to the A – Schedule property is set aside and is confirmed with regard to the B – Schedule property. Consequently, connected Civil Miscellaneous Petition is closed. No costs.

11.11.2022

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Internet : Yes/No
Index :Yes/No
Speaking / Non-Speaking
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To

1.The Principal Sub Court,
Kallakurichi.

2.The III Additional District Munsif Court,
Kallakurichi.

P.T. ASHA. J,

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Pre-delivery Judgment in
S.A.No.536 of 2021

11.11.2022