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S.A.No.1152 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2023

CORAM:

**THE HONOURABLE MRS.JUSTICE R. HEMALATHA**

**S.A.No.1152 of 2008**

1. T.N.Dhonan  
2. T.N.Bellu  
represented by his power of Attorney agent  
T.N.Dhonan

... Appellants

..Vs..

1. R.Thonan  
2. Lachiammal  
3. R.Nanjundan  
4. B.Chellan  
5. Thondan  
6. K.Joghee  
7. B.Bellie  
8. K.N.Mathan  
9. K.N.Kaman  
10.K.Belli  
11.N.Belliraj  
12.T.H.Bhojn  
13.H.Raju  
14.M.Sivarajan

... Respondents

**PRAYER :** Second Appeal filed under Section 100 C.P.C., against the decree and judgment dated 12.09.2006 made in A.S.No.1 of 2005 on the file of the District Judge of the Nilgiris at Udhagamandalam, upholding the decree and judgment dated 27.10.2004 made in O.S.No.43 of 2002 on file of the Subordinate Court at Nilgiris Udhagamandalam, The Nilgiris.



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For Appellants : Mr.A.Babblie  
For R1 & R5 : Dr.R.Gowri  
For RR7, 8, 10 to 14 : M/s.S.Nandhini Devi  
for Mr.R.Subrmanian

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### **JUDGMENT**

The unsuccessful Plaintiffs before both the Courts below have filed the present second appeal. The plaintiffs filed the suit in O.S.No.43 of 2002 before the learned Subordinate Judge, Nilgiris at Udhagamandalam for partition of the suit properties and to allot 4.46 acres of land with a house bearing Door No.5/21 in favour of the plaintiffs.

2 For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their rank in the present second appeal would also be indicated.

3 The case of the plaintiffs in nutshell is as follows:

An extent of 13.37 acres of land comprised in Survey No.120 of Thuner Village originally belonged to one Dhona Gowder. The said



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Dhona Gowder had three sons namely (1) Thutta Gowder, (2) Mothalai Gowder and (3) Selai Gowder. Each of them became entitled to 4.46 acres of land out of 13.37 acres after the death of Dhona Gowder. In the year 1901 Selai Gowder sold 4.46 Acres of land in the suit properties to one Sevanan. Later on in the year 1904 Sevanna Gowder sold the said property in favour of one Karia Nanjan, who is the father-in-law of Selai Gowder's daughter. Karia Nanjan had two sons namely (1) Konga Gowder and (2) Kali Gowder. The said Kali Gowde's share of 2.23 acres of land was purchased by the plaintiffs on 26.03.1983 and the remaining 2.23 acres of land was purchased by the plaintiffs on 26.02.1992 from the heirs of Konga Gowder. Thus the plaintiffs under these sale deeds are jointly entitled to 4.46 acres of land in the suit properties. The defendants 1 to 13 are entitled to the remaining land of 8.90 acres and the suit properties are in joint possession till date. Hence the plaintiffs have filed the present suit for partition.

**4** The suit was resisted by the defendants on the ground that the suit properties had already been orally partitioned and hence the suit for partition is not maintainable.



**5** On the basis of the above pleadings, the Trial Court

Judge framed the following issues :

1. Whether the plaintiffs are entitled for a preliminary decree as prayed for?
2. To what relief?

**6** In the trial Court, the plaintiff examined himself as P.W.1 and marked Ex.A1 to Ex.A8. The first defendant examined himself as D.W.1 and marked Ex.B1 to Ex.B4.

**7** After full contest, the learned Subordinate Judge, Nilgiris at Udhagamandalam, dismissed the suit filed by the plaintiffs vide his decree and judgment dated 27.10.2004 on the ground that since the suit properties had already been orally partitioned among the parties, the suit filed by the plaintiff is not maintainable. However, since the defendants admitted the possession and enjoyment of 3 acres by the plaintiffs in the suit properties, the trial Court Judge granted liberty to file a separate suit for injunction.



**8** Aggrieved over the decree and judgment passed by the trial Court, the plaintiffs filed an appeal in A.S.No.1 of 2005 before the District Judge, Nilgiris, Udthagamandalam. The learned District Judge after analysing the oral and documentary evidence adduced on both sides, vide decree and judgment dated 12.09.2006, upheld the findings recorded by the trial Court.

**9** As against the concurrent findings rendered by both the Courts below, now the present second appeal is filed by the plaintiffs. On 12.11.2008, this Court framed the following substantial questions of law:

- a) Whether the Courts below were right in upholding the oral partition of the defendants to the exclusion of the documentary evidence tendered by the plaintiffs is legally sustainable?
- b) Whether the finding of the Courts below that both the plaintiffs and defendants are not blood relations the theory of joint holding is ruled out is sustainable in law?
- c) Whether the Courts below right in putting the burden of proof on the plaintiffs in respect of plea of the oral partition set up by the



defendants, which was not proved?

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**10** Heard, Mr.A.Babbie, learned counsel for the appellants and Dr.R.Gowri, learned counsel for the respondents 1 & 5 and Mrs.Nandhini Devi, learned counsel for the respondents 7, 8, 10 to 14.

**11** The suit properties as described in the plaint is a land comprised in Survey No.120 of Thuneri Village measuring an extent of 13.37 acres. The plaintiffs claim that they are entitled to 4.46 acres of land in the suit properties. It is not in dispute that the suit properties originally belonged to one Dhona Gowder, who had three sons by names (1) Thutta Gowder, (2) Mothalai Gowder and (3) Selai Gowder, who are each entitled to 4.46 acres of land in the suit properties.

**12** It is contended by the defendants that after the death of Mothalai Gowder, his daughter Manickammal sold her father's share of 4.45 acres of land to one Maji Sevana Gowder through a registered sale deed dated 08.08.1898. Subsequently, on 02.09.1908, Maji Sevana Gowder's son sold the said property to one Ramar son of Thutta Gowder through a registered sale deed Ex.B2. Thereafter Selai Gowder's share of



4.46 acres of land was sold to one Narayana Gowder son of Sevana Gowder under a registered sale deed dated 02.07.1901 Ex.A4. During 1904 Narayana Gowder sold the said property to Nanjan (Karia Nanjan) under a registered sale deed Ex.A5. The plaintiffs purchased 2.23 acres of land in the suit properties through a sale deed dated 26.03.1983 Ex.A6 from the sons of Nanjan. The first plaintiff in fact purchased 1.11-1/2 acres from the heirs of Konga Gowder (one of the sons of Nanjan) through a registered sale deed dated 26.03.1992 (Ex.A7). The second plaintiff purchased 1.11-1/2 acres of land from the heirs of Konga Gowder through a sale deed dated 26.03.1983 (Ex.A8).

**13** According to the plaintiffs the properties in Survey No.120 of Thuneri village are in joint possession and enjoyment of the plaintiffs and the defendants and that there was no partition at all by metes and bounds. On the other hand, the case of the defendants is that the suit properties were already partitioned orally and the suit filed by the plaintiffs cannot be maintained. It is the further contention of the learned counsel for the plaintiffs that even though the first plaintiff during the cross examination admitted that the properties were already partitioned, the plaintiffs purchased certain properties subsequent to the oral partition



and that the suit properties are still in joint possession of the plaintiffs and the defendants.

**14** Both the Courts below after analysing the oral and documentary evidence adduced on both sides had held that the defendants had established that there was an oral partition between them and that the plaintiffs are not entitled to get the relief of partition as prayed for by them. In fact P.W.1, during the course of cross examination admitted that old Survey No.120 was sub-divided into 120/1 to 120/8 on the basis of possession and enjoyment and that this particular Survey No.120 was orally partitioned during the year 1970 amongst the four sons of Rama Gowder.

**15** Even though P.W.1 had contended that no share was allotted to one of the legal heirs of Nanjan, however, he admitted that some other property was allotted towards the share of Nanjan and therefore both the Courts below had held that there is no difficulty in accepting the case of the defendants that the suit properties were already divided and that the plaintiffs are not in joint possession of the suit properties with the defendants.



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**16** The findings of both the Courts below are based on the sound principles of law. The Courts below have properly appreciated the oral and documentary evidence and in fact there are no substantial questions of law involved in the present second appeal.

**17** In the result,

- i. The Second Appeal is dismissed. No costs.
- ii. The degree and judgment dated 12.09.2006 made in A.S.No.1 of 2005 by the learned District Judge, Nilgiris at Udthagamandalam, and the decree and judgment dated 27.10.2004 made in O.S.No.43 of 2002 by the learned Subordinate Judge, Nilgiris at Udthagamandalam, are upheld.

**12.06.2023**

Index : Yes/No  
Internet : Yes/No  
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To

1. The District Judge, Nilgiris at Udthagamandalam.
2. The Subordinate Judge, Nilgiris at Udthagamandalam.
3. The Section Officer, V.R. Section, High Court, Madras.



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**R. HEMALATHA, J.**

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