



S.A. Nos.1365 of 2008 & 964 of 2010

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED : 23.11.2023

CORAM

**THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI**

S.A.Nos.1365 of 2008 & 964 of 2010

K.Shankar

S/o. Late Kappini Gowder

... Appellant in S.A.No.1365/2008

Devaramma

W/o. Late Nanjappan

... Appellant in S.A.No.964/2010

Vs

1.Lakshmiammal

2.S.Balakrishnan

3.S.Narayanan

4.S.Nalini

5.S.Sreenivasan

6.Geetha @ Punniavthi

7.Pushpa

... Respondents in S.A.No.1365/2008

1.Lakshmiammal

2.S.Balakrishnan

3.S.Narayanan

4.S.Nalini

5.Onnappa

6.Jayalakshmi (died)

7.Renuka Devi

8.Kumar

9.Nagarajan



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- 10.Lakshmanan
- 11.Devariammal (Died)
- 12.Onnammal (Died)
- 13.K.Shankar
- 14.Parvathi

... Respondents in S.A.No.964/2010

[R6, R11 & R12 died. R7 to R10 Lr.s of the 6th respondent vide Court Order dated 13.04.2022 made in M.P.No.1 of 2008 in S.A.Nos.964 of 2010 & 1365 of 2008. Memo is recorded (RHJ).]

**PRAYER in S.A.No.1365 of 2008 :** Second Appeal filed Under Section 100 of the Civil Procedure Code, praying to set aside the Judgment and decree dated 12.01.2007 made in A.S.No.16 of 2006 passed by the learned District Judge, Nilgiris, Udthagamandalam in reversing the Judgement and Decree dated 07.08.2006 made in O.S.No.82 of 2005 on the file of the Subordinate Court, Nilgiris.

**PRAYER in S.A.No.964 of 2010 :** Second Appeal filed Under Section 100 of the Civil Procedure Code, to set aside the Judgment and decree dated 12.01.2007 made in A.S.No.15 of 2006 passed by the learned District Judge, Nilgiris, Udthagamandalam, reversing the Judgement and Decree dated 07.08.2006 made in O.S.No.151 of 2001 on the file of the Subordinate Court, Nilgiris, Udthagamandalam.



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For Appellant in S.A.No.1365/2008 : Mr. D. Krishna Prasad, Senior Counsel  
for Mr. N. Dhamodaran  
For Appellant in S.A.No.964/2010 : Mrs. Chitra Sampath, Senior Counsel  
for Mr. A. E. Ravi Chandran

For R1 to R7 in S.A.No.1365/2008 : Mr. T. K. Bhaskar  
For R1 to R4 in S.A.No.1365/2008 : Mr. T. K. Bhaskar  
For R5 in S.A.No.1365/2008 : Mr. K. F. Manavalan  
For R6, R11 & R12 in S.A.No.1365/2008: Died  
For R7 to R10 in S.A.No.1365/2008 : No appearance  
For R13 & R14 in S.A.No.1365/2008 : Mr. N. Damodaran

### **JUDGMENT**

The appellant has preferred these Second Appeals against the Judgment and decree passed by the learned District Judge, Nilgiris, Udthagamandalam, in A.S.Nos.16 & 15 of 2006, respectively, dated 12.01.2007, reversing the Judgement and Decree dated 07.08.2006 made in O.S.Nos. 82 of 2005 & 151 of 2001, respectively, on the file of the Subordinate Court, Nilgiris, Udthagamandalam.

2. The 8<sup>th</sup> defendant / respondent in the appeal and 1<sup>st</sup> respondent in A.S.No.16 of 2016 have preferred these S.A.Nos.946 of 2010 and 1365 of 2008 respectively.



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3. For the purpose of convenience, the parties herein are referred to as they are ranked in the suit.

4. The learned counsel for the 8<sup>th</sup> defendant in the suit submitted that the First Appellate Court failed to see that the plaintiff has not established either through oral or documentary evidence that suit property in S.No.660 Coonoor Town, to an extent of 8.33-7/17 acres of land being enjoyed as a joint family property and as a plaintiff, he is having right over the same. In spite of that, the share allotted in favour of the plaintiff set aside by the findings of trial Court, as such are unfair and liable to be set aside. Further, he would submit that the Lower Appellate Court erroneously appreciated the documents Ex.A1,A2,A18,A19,A20 & A27 relied on by the plaintiff, in order to claim share in the property, besides the fact that those documents are not permissible under law, as it was unregistered, more particularly relied on by the plaintiff, is said to be executed in the presence of the Panchayathar. Further, he would submit that the learned Appellate Judge failed to see that the plaintiffs are totally entitled for 24 cents with building bearing Door No.E 20 as per their share under the Will dated 08.07.1985,



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Exs.B3 was executed by testator Lingammal, mother of the original plaintiff

Siva Gowder and ignoring the same, the First Appellate Court granted their share and as such, is totally misconception of law and it is liable to be set aside. Further, the learned counsel for the appellant submits that the First Appellate Court failed to appreciate the Specific performance suit filed between the original owner Sagunthala Devi and the legal heirs of Onna Gowder, in which the plaintiff Siva Gowder was not a party, despite the decree as well as the said sale deed, the lower Appellate Judge erroneously concluded that the plaintiff is entitled for the share to an extent of 1.45 acres along with residential Door No.E 20, as such is liable to be set aside. Further, he would submit that the Lower Appellate Judge gave weightage to the family arrangement, which is unregistered and and it is legally not permissible in Law, and ignoring the sale deed Ex.B2 executed, through Court of Law through which shares of both the parties were concluded legally, thereby the learned counsel prayed to set aside the findings of the Lower Appellate Judge by allowing these appeals.



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5. By way of reply, the learned counsel for the plaintiff / respondent submitted that total extent of the suit property was originally 8.33-7/17 cents of agricultural land with residential house, which originally belongs to one Sagunthala and the same was under the cultivation and enjoyment of original plaintiff / Siva Gowder's father Onnappan as a cultivating tenant and after his demise in the year of 1978, the tenancy rights were inherited by the legal heirs.

6. During the life time of Onnappa Gowder, the original owner agreed to sell 8.33-7/17 acres of agricultural land to the Onnappa Gowder who as a "Karthā" directed the Sagunthala Devi to have a sale agreement in favour of Lingammal, Deivanai Ammal, Onnappa Gowder and Devan. In spite of the sale agreement, the entire Onnappa family property was considered as a joint family property. In the year 1980, Lingammal & Devan died and the plaintiff Siva Gowder and the defendants 1, 7 and 9 are the children of Lingammal and D8/ appellant is the daughter of law of Lingammal. D2 to D6 / wife and children, who are legal heirs of Devan. As a joint family Manager, Onne Gowder maintained the entire property doing agricultural



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with other legal heirs, without any metes and division. After his death, there was a Panchayat held in Karnataka Sangam in which Muchilika was executed on 23.01.1980. Accordingly, the value of the property was fixed and the same is to be contributed by each sharer, as per the Panchayat decision. The original plaintiff Siva Gowder was not able to pay the amount in respect of his share of 50 cents and for the balance amount, he agreed to pay as per the direction of the Panchayat and mode of division of the property was also suggested in the said Panchayat, and list was prepared on 27.07.1980 confirming the allotment of the property already made. Thereafter, as per the Panchayat Muchilika, properties are enjoyed by the respective parties. In the meanwhile, the legal heirs of the Onna Gowder filed the suit for Specific Performance in O.S.No.49 of 1982 and obtained decree against erstwhile owner. Based on the said decree, sale deed was executed through Court of law, and though sale deed stands in the name of 4 legal heirs of Onna Gowder, but the entire property was treated as joint family property. Original plaintiff / Siva Gowder's mother Lingammal who was first plaintiff in the Specific performance suit in O.S.No.49 of 1982, executed a Will, through out of her share which she bequeathed 24 cents in



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favour of the plaintiff / Siva Gowder and as per his share, he is entitled another 1.22 acres along with house Door No.E 20 and as the defendant refused for amicable partition, he filed a suit for partition claiming 1.45 acres with house and to prove the same, he relied on Panchayat- Muchilika- Ex.A1, Agreement for partition - Exs.A2 & A3, another Panchayat resolution - Exs.A19 & A20 and also examined one of the Panchayathar as P.W.2. Through the said oral and documentary evidence, the plaintiff has proved his claim and rightly appreciated by the Lower Appellate Judge, more particularly, the list prepared in the Panchayat on 27.07.2018, confirming the allotment of the property in favour of all the sharers, thereby, the allotment as per the list Ex.A2, 1 acre 21 cents were granted in favour of the original plaintiff / Siva Gowder. Besides, plaintiff mother Lingammal was allotted 1.26 acres, and as per the Will executed by her, he is entitled for 24 cents as per the Panchayat list Ex.A2. Original plaintiff / Siva Gowder is entitled for 1.24 acres and the same was rightly appreciated by the Lower Appellate Judge. Hence the learned counsel for the respondent prayed to dismiss the appeals as devoid of merits.



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7. Considering both side submissions and on a perusal of the record, it reveals that the original plaintiff / Siva Gowder filed a suit for partition in O.S.No.151 of 2001 against 9 defendants. Admittedly, plaintiff's father is Onna Gowder and his mother is Lingammal, son/plaintiff and deceased Nanjappan / husband of D8, daughters D7 & D9, legal heirs of Devan is D2, to D6 and D10. Subsequently, the purchaser who purchase 1.67 acres of the land were added as D10 and D11.

8. During the pendency of the suit, Siva Gowder, the original plaintiff, died, leaving behind his legal heirs as plaintiffs 2 to 5. The original plaintiff Siva Gowder filed a suit for partition to divide the suit property and allot share as per the partition list prepared by the Panchayat, Ex.A2 dated 27.02.1980. Thereby he prayed to allot 1.27 acres + 24 acres as per the enjoyment of the properties. The total extent of the suit property was described in the plaint schedule as an extent of 8.33-7/17 acres of agricultural land, in which the plaintiff is claiming 1.45 acres of land in 4 plots and residential premises / bearing Door No.E20. The subsequent purchaser / Shankar filed a suit in O.S.No.82 of 2005 against the plaintiff in



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O.S.No,151 of 2001 for permanent injunction and both the suits were jointly tried before the trial Court. On framing of the issues, the learned trial Judge held that the partition list relied on by the plaintiff is not valid, nor the plaintiff proved that the suit property was a joint family property of the family. Besides the decree passed in specific performance suit in O.S.No.82/2005, the mother of the plaintiff / Lingammal was allotted 1.61 acres of agricultural land and as per the Will executed by her dated 20.11.1990, the plaintiff / Siva Gowder was allotted 24 cents together with House, Door No.E 20 and the same was confirmed in the agreement of partition dated 23.01.1993, which was marked as Ex.B4, thereby the right of the plaintiff in the suit property had not been established. Accordingly, the suit was dismissed and the purchaser filed a suit in O.S.No.82 of 2005 and proved that it belongs to the plaintiff therein. Accordingly, the said suit was decreed.

9. Aggrieved by the same, the defendants have preferred appeals against both suits, in A.S.No.15 and 16 of 2006, before the learned District Judge, Nilgiris. The learned lower Appellate Judge independently analyse



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the facts and evidence on record and finally concluded that though the Panchayat list was not registered, but admittedly, as per the recitals, it is a family arrangement, thereby Ex.A2 list can be treated as a document in the nature of memorandum, evidencing family arrangement already entered into and not prepared as record, which had been agreed upon, and it need not be stamped or registered.

10. To that effect, the learned counsel for the defendants relied on the ratio in the case of ***Lakshmipathy - V.Chakrapani Reddiar reported in (2001-1 MLJ 1)***, which reads as follows:

*"i. A family arrangement can be made orally.*

*ii. If made orally, there being no document, no question of registration arises.*

*iii. If the family arrangement is reduced to writing and it purports to create, declare, assign, limit, or extinguish any right, title or interest of any immovable property, it must be properly stamped and duly registered as per the Indian Stamp Act and Indian Registration Act.*

*iv. Whether the terms have been reduced to the form of a document is a question of fact that in of the nature of*



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*phraseology of the writing (End of the 11th page in the original) and the circumstances in which and the purpose with which it was written....*

*v. However, a document in the nature of a Memorandum evidencing a family arrangement already entered into and had been prepared as a record of which had been agreed upon, in order that there are hazy notions in future. It need not be stamped or registered.*

*vi. only when the parties reduce the family arrangement in writing with the purpose of using that writing as proof of what they had arranged and, where the arrangement is brought about by the document as such, that the document would require registration as it is then that it would be a document of title declaring for future what rights in what properties the parties possess.*

*vii. If the family arrangement is stamped but not registered, it can be looked into for collateral purposes.*

*viii. A family arrangement which is not stamped and not registered cannot be looked into for any purpose in view of the specific bar in Section 35 of the Indian Stamp Act."*

11. As per the Ex.A2 Panchayat list of partition clearly indicated that,



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at the time of said Panchayat, the parties have no title over the property, and so it need not be registered. On the other hand, the same can be considered that there was a Panchayat held in respect of the division of the property and shares were also determined, confirmed in Exs.A2 and A3. Thereby, those documents can be considered as a family arrangement through which the properties were agreed to be divided by the parties. Accordingly, the learned lower appellate Judge held that Exs.A3,18,19 & 20 were the documents laid in Panchayat Muchilika list having evidentiary value. Accordingly, the plaintiff proved that the property is a joint family property in which, he is entitled to claim the share as he prayed for.

12. Further, it was held that Ex.P6 Sale deed stands in the name of other legal heirs of Onna Gowder and it was subsequent to the said family arrangement and so it has no binding effect. There was no partition after the said family arrangement, based on Ex.P6. Therefore the plaintiff is entitled for the suit claim by holding that Exs.A2, A3, A18, A19 and A20, all are of true value. Now challenging the said finding, the suit filed by the purchaser was dismissed stating that the purchase made by the true owner would not



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bind the Siva Gowder / plaintiff, thereby the said suit was dismissed.

Challenging the said findings, 8th defendant and the purchaser filed the above second appeals.

13. The Substantial Questions of Law that arises for consideration are as follows:

*"i. Where the plaintiffs were not a party in the sale agreement and the sale deed through which title to the suit property is traced, whether any evidence can be given contradicting or varying from its terms in contravention to Section 92 of the Evidence Act?*

*ii. Where the Ex.A2 which is said to be panchayat Muchalika entered into between the parties creates a right over an immovable property is admissible in evidence under Section 35 of the Stamp Act with out the same being stamped or registered as per law?*

*iii. Whether the relief of partition as sought for by the plaintiffs is maintainable merely on the strength of panchayat*



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*Muchalika without proving joint possession or enjoyment of the suit property, when especially Ex.A2 itself is in admissible in evidence?"*

14. Admittedly, except purchaser, all the parties are legal heirs derived from Onna Gowder. The original plaintiff Siva Gowder is the son of the said Onna Gowder. The original owner of the suit property is one Sagunthala Devi, under whom Onna Gowder has cultivating the land as a cultivating tenant and the said fact is admitted by all the parties. During the life time, the said Onna Gowder as "Karthi" of the Joint family, possessed and enjoyed the suit property and during his life time, he entered into sale agreement with original owner / Sagunthala Devi, as a cultivating tenant.

15. After the demise of the Onna Gowder, the Panchayat was conveyed by Karnataka Sangam and appointed the plaintiff, in order to make division of the entire joint family property. The plaintiff contended that Panchayat Muchilika was executed in the year 1980, which is marked as Ex.A1. Subsequently agreement of partition was also executed as per Ex.A2,



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in which Siva Gowder / Plaintiff was given 1.23 acres, his mother Lingammal was given 1.67 acres, D1 was given 2.42 acres, and another brother Devan was given 1.67 acres. Devarammal / 8th defendant / appellant had taken 1.37 acres. But as per Ex.A3, the plaintiff Siva Gowder relinquished all his rights in respect of 1.17 acres, as he was not able to pay the contribution as fixed by the Panchayat. Based upon all these documents, the plaintiff, as per the Panchayat list Ex.A2, already made division of the property which was reduced into writing, but subsequently other defendants were not co-operating for partition. Hence, he filed a suit for partition. But the claim of the plaintiff was totally denied by the defendants and by relying on the decree in O.S.49 of 1982 filed by the agreement holders / legal heirs of the Onna Gowder, namely Lingammal, Devarammal, Onnapan and Devan, against original owner Sagunthala Devi and Rukkmani Devi, admittedly, the suit was decreed and contested, and to that effect, Ex.A22 and A23 were produced. Subsequently, appeal suits were dismissed. Thereafter, EA.No.86 of 95 was filed for execution of sale deed, and in that execution proceedings, original owner Siva Gowder raised objection and subsequently it was withdrawn. Thereafter, the sale deed was prepared and



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executed through Court of Law, and Exs.B1 to B6 were marked. As per

Ex.B6, recitals of the sale deed clearly reveals that Siva Gowder was not a party to the specific performance suit. So also, Siva Gowder was not a party to the execution proceedings, as rightly pointed out by the appellant's counsel, and in the recitals of the sale deed, the share was allotted to Lingammal, who died testate, leaving unregistered Will bequeathing her share to her children and therefore, as legal heirs Lingammal, the plaintiff / Siva Gowder is entitled to 27 cents in the suit property. Furthermore, as per the agreement of partition entered, after the said sale deed, between the sharers on 22.01.1993 the plaintiff / Siva Gowder was allotted Schedule - B with 24 cents with Door No.E20 with specific 4 boundaries, comparing to the sale deed Ex.B6 and as per the partition agreement, Ex.B4, the plaintiff's share is only 24 cents. But he is claiming more extent of 1.21 acres, based on the partition deed dated 27/01/1980.

16. Whether Ex.A2 is valid document to prove the right and title of the plaintiff, is to be decided. Ex.A2 is unregistered document and as per the recitals therein, the properties are agreed to be divided among the sharers.



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But admittedly, the said document was executed on 27.07.1980. In respect of the suit property, it is undisputed fact that the original owner of the suit property is one Sagunthala Devi, under whom the father of the original Plaintiff / Onnappa Gowder was enjoying the land as a cultivating tenant. Therefore, the property is not a joint family property and the "Karthi" Onnappa Gowder along with sons and daughters were jointly cultivating the land and therefore the claim of the plaintiff that it is a joint family property, as such, is not acceptable one. Joint family property is totally different from the joint cultivation. It is also admitted fact that the original owner Sagunthala Devi, and the Legal heirs of Onna Gowder have entered into a sale agreement, and thereafter based on the Court decree, sale deed was conveyed in favour of the legal heirs in the year 2000 and the sale deed was also marked on the side of the defendant i.e., Ex.B8 which clearly reveals that the entire extent of the suit property was conveyed through the Court of Law only in the year of 2000. Therefore, on the date of alleged original partition, the original plaintiff / Siva Gowder and others are not the original owners of the property, on the other hand, they are jointly cultivating the property. Therefore, execution of Panchayat Muchilica and the Panchayat



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list Ex.A2 would not confer any title in favour of the plaintiff. But the learned Lower appellate Judge, without considering all these legal impediments erroneously held that Ex.A2 is a partition list under which the plaintiff and others entitled for partition. As discussed above, they have jointly enjoyed the property, and therefore the alleged document Ex.A2 is admissible under the provisions of Registration Act. Accordingly, question of law 2 and 3 are answered.

17. Furthermore, as per the sale deed Ex.B2, valid title was conferred in favour of the plaintiff in specific performance suit in O.S.No.49 of 1982, in which the plaintiff was not a party and his mother Lingammal alone was a party, who bequeathed share to all the legal heirs equally, including this plaintiff. Therefore, the sale deed also binds the plaintiff and against the recitals of the documents, plaintiff is not entitled to adduce evidence, but the same was not properly appreciated by the learned Lower Appellate Judge. Hence, the findings rendered by the Lower Appellate Judge are liable to be set aside. Accordingly Question of Law 1 is answered.



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18. In view of the above discussion, the findings given by the learned District Judge, Nilgiris, Udthagamandalam, in A.S.Nos.16 & 15 of 2006, dated 12.01.2007, are set aside.

19. Accordingly, these Second Appeals are allowed. There shall be no order as to costs.

**23.11.2023**

Index : Yes/No

Neutral Citation : Yes/No

Speaking/Non Speaking order

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To

1. The District Judge, Nilgiris, Udthagamandalam
2. The Subordinate Judge, Nilgiris.
- 3.The Section Officer, VR Section, High Court of Madras.

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**T.V.THAMILSELVI, J.**

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