



S.A No.511 of 2013

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

**DATED: 03.01.2023**

**CORAM:**

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

**S.A No.511 of 2013**

1.Panchatcharam

... Appellant

Vs.

1.Annamalai  
2.Rajakumari

...Respondents

**PRAYER:** This Second appeal filed under Section 100 of the Code of Civil Procedure against the Judgement and decree dated 28.02.2012 made in A.S No. 30 of 2011 on the file of the Subordinate Court, Arni at Thiruvannamalai as reversing the judgment and decree dated 22.07.2011 made in O.S No. 306 of 2007 on the file of the District Munsif Court, Arni, Thiruvannamalai District.

For Appellant: Mr.A.Paramasivam  
For R1 & R2: Mr.P.Mani



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## **JUDGMENT**

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The appellant herein is the plaintiff in suit O.S No. 306 of 2007 on the file of the District Munsif Court, Arni, Thiruvannamalai, against the defendants for the relief of specific performance directing them to execute the sale deed as per the sale agreement dated 02.07.2007 with regard to the suit property. The first defendant is the brother of the plaintiff and the second defendant is the wife of the first defendant and both of them contested the suit stated that the suit property is the self acquired property of the plaintiff's father which is not yet divided, and apart from the plaintiff first defendant, one Chinnapayan and Ponniammal are legal heirs of their father. Further, they also stated that they were not entered into agreement with the plaintiff as alleged in the plaint. Before the Trial Court both the parties adduced their respective evidence and to prove the sale agreement the plaintiff examined one of the attesor of the sale agreement. On considering submissions on both sides the Trial Court held that sale agreement is valid one thereby directed the defendants to execute the sale deed as per the sale agreement and decreed the suit in favour of the plaintiff.



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2. Aggrieved and dissatisfied over the same the defendants

preferred an appeal before the Subordinate Court, Arni in A.S No. 30 of 2011, the lower appellate Court independently analysed the facts and evidence held that suit property is joint family property in which the plaintiff's brother and sister have equal share, and the sale agreement Ex.A1 also not been proved by the plaintiff as per manner known to law thereby concluded that the plaintiff is not entitled for the relief of specific performance accordingly findings rendered by the Trial Court was set aside and dismissed the suit.

3. Challenging the said findings the plaintiff preferred this second appeal stated that there was no particulars about the ownership of the property without such particulars the Court below erroneously held that suit property is aj oint family property which is absolute unsustainable and unwarranted and also contended that the defendant not proved the Ex.A1 sale agreement was fraudulently created by the plaintiff through material evidence in spite of that suit was dismissed which is unfair and liable to be set aside. Hence he prayed to allow the second appeal. This Court admitted the second appeal with the following substantial questions of law:



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i. Whether the lower appellate Court erred in setting aside the judgement of the Trial Court while granting a decree for specific performance by holding that the plaintiff/appellant herein had satisfied the requirements as contemplated under the specific relief Act?

ii. Whether the lower appellate Court correct in holding that the property in question was an undivided one in the absence of a valid document or decree in the alleged suit for partition?

iii. Whether the lower Court erred on considering the granting of specific performance to the extent of any right over the property in question in the event of adjudication in the alleged partition suit under Section 12 (3) of the Specific Relief Act?

4. The case of the plaintiff is that the first defendant offered to sell the suit property to the plaintiff and sale consideration was fixed as Rs. 25,000/- and the sale agreement/ Ex.A1 was executed on 02.07.2007 a sum of Rs. 1001 was paid by the plaintiff as advance and three months time was fixed for completion of the sale agreement and the defendant also agreed to execute a sale deed after receiving the balance sale consideration. On the side of the plaintiff he produced Ex.A1/sale agreement. The first defendant is the brother of the plaintiff who contested the suit stated that the suit property is not exclusively belongs to the plaintiff nor his wife/ second defendant. Further, the plaintiff has no exclusive right over the suit property since because it is self acquired property of his father after his father's demise his four legal heirs i.e., plaintiff, first defendant and one Chinnathambi and Ponniyammal having share in the suit property. In order



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to grab the suit property the plaintiff fraudulently created the sale agreement and making false claim over the property.

5. The learned counsel for the appellant submitted that sale agreement between the parties was duly proved by the plaintiff even the suit property belongs to the joint family the defendant's sale agreement is valid one but without any document relating to the suit property the Court below erroneously held that it is joint family property and dismissed the suit as such is unfair and liable to be set aside

6. By way of reply the learned counsel for the respondent contended that both the plaintiff and P.W.2 admitted that the suit property is joint family property and their admission itself proves that it is joint family property it needs no further proof and thereby the Court below rightly appreciated this facts needs no interference.

7. On considering the submission of either side, on perusal of records and evidence, during the cross examination of P.W.1 he admitted that partition suit was filed by one of his brother in O.S No. 385 of 2007 in respect of suit properties. P.W.2 attestor also admits that suit property is not been divided so far. It is settled proposition that admission made by the parties in their evidence needs no further proof. Apart from that, the



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plaintiff approached the Court for the relief of specific performance hence burden is upon him to prove that the suit property is belongs to the defendants. Admittedly he has not produced any document to show that defendant's title over the property, during the evidence he contended that the suit property belong to his father and after his father's demise said property was equally allotted to the plaintiff and first defendant but there was no document was adduced on the side of the plaintiff to prove the said division. Even in the plaint the plaintiff has not stated how the suit property was allotted in their favour after demise of their father. Therefore, the plaintiff failed to establish that the suit property belongs to the defendants. Moreover, the second defendant being wife of the first defendant has no right over the suit property but there is no explanation on the side of the plaintiff as to why he has obtained her signature in that sale agreement. The Court below rightly appreciated this aspects but the Trial Court failed to take note of the fact as such is unsustainable. Further, the defendants denied the alleged sale agreement said to be executed by him in favour of the plaintiff. Even assuming that the sale agreement is valid one the plaintiff is bound to prove the same through material evidence. P.W.2 attestor of the sale agreement in his evidence stated that the suit property is not yet



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divided and also there is a dispute between the plaintiff and the defendants with regard to division of the properties and he also not aware of the contents of the Ex.A1. So the evidence of the P.W.2 also not established that valid sale agreement was executed between the parties on 02.07.2007. Further he being a close relative of the plaintiff his testimony also tainted with interest, except P.W.2 there is no material evidence adduced on the side of the plaintiff to prove valid execution of the sale agreement. Therefore, the plaintiff failed to prove the Ex.A1.

8. But the learned counsel for the appellant submitted that even assuming that property is joint family property the considerable portion is going to be allotted to the share of the appellant could be added in favour of the plaintiff to that effect he relied the judgement of this Court in the case of Navaneethakrishnan and others Vs S.A. Subramanina Raja reported in 2011 CIJ 352 REJ:

*18. The suit property is held to be the ancestral property and therefore, on the date of the death of perumal naicker, appellants 1 and 2 were also co-owners along with Perumal Naicker at the time of his death. Therefore, appellants 1 and 2 had 1/3 share in the property and 1/3 share of Perumal Naicker devolved on them as well as their mother, the first defendant. Therefore, appellants 1 and 2 got 1/3 share by birth and 1/9 share each through their father. Therefore, the first appellant and the second appellant became entitled to 4/9 share belonged to the mother Avudaihayammal, the first defendant.*



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9. The above referred judgment of the case is not applicable to the facts of the present case, as the plaintiff failed to prove that Ex.A1 sale agreement moreover there was a dispute between the parties with regard to division of the property and police complaint also lodged in respect of the said property, in such circumstances it is unbelievable that the first defendant voluntarily offered to sell the suit property in favour of plaintiff. Further there is no explanation offered by the plaintiff as to why he got the signature of second defendant in the sale agreement. Admittedly, the suit in O.S No. 385 of 2007 was filed by the elder brother of the plaintiff and he also appeared in that case through his counsel this fact was not disclosed in plaint. Hence, the conduct of the plaintiff proved that the plaintiff not approached the Court with clean hands as the relief claimed by him is equitable remedy to avail the same plaintiff has to prove his own case but he failed.

10. As discussed above, the plaintiff not proved Ex.A1 sale agreement as valid and approached the Court with suppression of facts. Accordingly question of law i, ii, iii are answered. The lower appellate Court below rightly appreciated these aspects which needs no interference.



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10. In the result, the Second Appeal is dismissed. No Merit.

There shall be no order as to costs.

**03.01.2023**

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**To**

1. The Subordinate Court, Arni.
2. The District Munsif Court, Thiruvannamalai.
3. The Section Officer,  
V.R Section.



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

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