



S.A.No.604 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2023

CORAM

THE HON'BLE MR. JUSTICE **A.D.JAGADISH CHANDIRA**

S.A.No.604 of 2023
and C.M.P.No.19274 of 2023

M/s.Clastic Farms (Chennai) Limited,
Represented by its Manager, R.Dhanasekar,
Clasic Farms Road,
Sholinganallur, Chennai 600 119.

... Appellant

Vs.

- 1.Subathrai
2. Krishnammal
3. Meenakshi
4. Karpagam
5. Saravanan
6. Thangaraj
7. Kaveri
8. Shanmugham
9. Nallamuthu
10. Nataraj
11. Eswaran
12. Saraswathy



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13. Kamala

14. Manoharan

15. Karthik

16. Kalaimani

17. Mahalakshmi

18. Pamanabhan

19. Murugan

... Respondents

PRAYER : Second Appeal filed under Section 100 of C.P.C., pleaded to set aside the decree and judgment made in A.S.No. 16 of 2021 on the file of the learned Additional Subordinate Judge, Chengalpattu dated 16.02.2023, confirming the judgment and decree made in O.S.No.323 of 2008 on the file of the learned District Munsiff, Chengalpattu dated 04.12.2020.

For Appellant : Mr.E.Sathish Kumar

For Respondents : Mr.K.S.Madhavan
for R1/caveator

JUDGMENT

The Second Appeal has been filed by the 19th defendant, who lost his case before both the Courts below.



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2. The first respondent herein/plaintiff, filed the Suit seeking the relief of partition, declaration and permanent injunction. The suit was decreed in favour of the first respondent/plaintiff, against which, the appellant/19th defendant has filed the appeal.

3. For the sake of convenience, the parties are referred to as they are arrayed in the original suit.

4. The case of the plaintiff is as under:-

4.1. The suit schedule mentioned properties are self acquired properties of the father of the plaintiff Govindasamy Naicker. The said Govindasamy Naicker died intestate on 16.07.1970 leaving behind him three sons and two daughters. The plaintiff's mother died on 19.06.1994 and subsequently, except the plaintiff, the other children of the said Govindasamy Naicker also died. His first son Subramani died on 17.12.2006 leaving behind him his wife Krishnammal/ 1st defendant herein as his legal heir. The second son Logu died on 19.08.1999 leaving behind him the defendants 2 to 6 as his legal heirs. The third son Kannan died on 23.01.1997 leaving behind him the defendants 13 to 16 as his legal heirs. The daughter,



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Boopathiammal died on 31.12.1993 leaving behind her the defendants 7 to 12 as her legal heirs.

4.2. After the demise of the said Govindasamy Naicker, the plaintiff is entitled to 1/5th share in the suit schedule mentioned properties. Likewise the 1st defendant is entitled to 1/5th share, defendants 2 to 6 are jointly entitled to 1/5th share, defendants 7 to 12 are jointly entitled to 1/5th share and defendants 13 to 16 are jointly entitled to 1/5th share.

4.3. The properties were not partitioned till the date of the suit and one Subramani, husband of the first defendant, being the eldest male member, maintained the suit properties on behalf of entire joint family. After the demise of the said Subramani, the plaintiff demanded partition of her 1/5th share in the suit schedule mentioned properties but, the defendants had denied the right of the plaintiff in the suit schedule mentioned properties. Hence the plaintiff had issued legal notice dated 06.03.2007 to defendants 1,2,4,5,13 to 15 and to one Chandran Naicker, who is the cousin of the plaintiff. Defendants 5, 13, 14, though received the legal notice, did not issue any reply to the same. While, the other defendants have refused to receive the notice, the said Chandran had replied on 12.03.2007 contending



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that he has no right over the suit property and thereby, he has not been shown as party to the suit.

4.4. Subsequently, the plaintiff applied for encumbrance certificate in respect of the suit schedule mentioned properties and found that some of the suit schedule mentioned properties were alienated by the defendants by registration of sale deeds as under:-

<i>S.No</i>	<i>Document No</i>	<i>Date</i>	<i>Executed by</i>	<i>In favour of</i>
1	1529/2002	28.05.2002	Defendants 13 to 16	Defendant 20
2	2426/2002	26.08.2002	Defendants 13 to 16	Defendant 18
3	2732/2006	14.03.2006	Defendants 2, 4 & 5	Defendant 19
4	6749/2007	11.05.2007	1 st Defendant	Defendant 17

Despite the execution of the above sale deeds, possession has not been handed over to the subsequent purchasers viz., defendants 17 to 20.

4.5. The suit properties are the self acquired properties of the father of the plaintiff. The plaintiff could not produce a copy of the parent document from the Sub-Registrar's office, as the same was sent to Court and therefore, the plaintiff has produced EC copy alone to prove the self acquirement of the suit properties by the father of the plaintiff.

4.6 The suit properties were not partitioned and thereby, defendants 1 to 16 have no right to sell the same in favour of defendants 17



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to 20 or anybody else and thus, the above referred sale deeds are not valid and binding upon the plaintiff. Therefore, the suit has been filed in O.S.No.323 of 2008 before the learned District Munsiff, Chengalpattu, praying for partition by metes and bounds and separate possession of her 1/5 share, for declaration that the sale deeds executed by defendants 1 to 16 in favour of defendants 17 to 20 are not valid ones and for permanent injunction restraining the defendants from in any manner encumbering or creating any documents including sale of properties to any third parties until partition is effected.

5. The crux of the written statement filed by the fourth defendant and adopted by defendants 2, 5 and 6 is as under:-

The 4th defendant is the son of Logu, the brother of the plaintiff. Further, the plaintiff's father had presented the plaintiff with seervarisais, jewels etc., at the time of her marriage, which is equivalent to the properties allotted to her brothers. The brothers of the plaintiff had partitioned the family properties and obtained patta transferred for the allotted properties obtaining no objection from the plaintiff and Boopathi Ammal, the other sister. The patta for the properties were transferred in the



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year of February 1987. At that time, the plaintiff was aged 47 years and she had sufficient knowledge to demand anything in the family, whereas, for the past 21 years, there was no demand for partition. The plaintiff is now aged 70 years and she had not thought anything about the property for the past several years. Had she claimed for any share in the suit property, when her brothers were alive, truth could have come out. The present suit has now been filed with ill motive and thus, it is liable to be dismissed.

6. Defendants 8 to 12 had also filed the written statement admitting the case of the plaintiff and prayed for decreeing the suit. They also contended that defendants 17 to 20 cannot claim any right over the suit properties.

7. Defendants 13 to 16 filed a written statement and additional statement contending as under :-

The suit schedule mentioned properties are the ancestral properties and were partitioned among the sons of the said Govindasamy Naicker in the year 1968 under a koor chit and the plaintiff was aware of the same and at that time, the plaintiff was given in marriage to one Raghavan



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and dowry was bestowed on her either in the form of article, jewellery etc.

After the partition, the sons of the Govindasamy Naicker took their respective shares, got the patta and other Revenue Records transferred in their names. The subsequent purchasers, who are in actual possession of the suit properties at present are necessary parties to be added in the suit and in respect of the properties in possession of 3rd parties, the suit is barred by limitation. The suit has not been properly valued with regard to mesne profits and the suit is liable to be dismissed.

8. The 19th defendant filed a written statement contending as under:-

The 19th defendant had purchased 17 cents of agricultural lands in S.No.1/1F from the 20th defendant herein/Murugan through a sale deed dated 14.03.2006 and registered a Doc. No.2732/2006 on the file of the Joint Sub-Registrar -2, Chengalpattu for a valuable sale consideration as a bonafide purchaser, without notice of any encumbrance in the same. The 20th defendant had purchased the above extent of 17 cents through a sale deed dated 28.05.2002 and registered as Doc. No.1529/2002 from the defendants 13 to 16 and another Kathirvel Naicker, bonafide, for valuable sale



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consideration. From the date of purchase of the above lands, this defendant has been in peaceful possession and enjoyment of the said lands. The defendant had purchased another extent of 3 acres and 15 cents of agricultural lands situated in Edayankodummanthangal Village from defendants 2, 4, 5, who are the legal heirs of Loganathan vide sale deed dated 14.03.2006 registered in Doc.No.2732/2006. The prayer seeking a decree of declaration of the sale deed mentioned in the plaint is null and void, absolutely unsustainable and incompetent and in any event the plaintiff is not entitled to such a prayer. The plaintiff has no cause of action or entitlement to the relief's sought in the plaint and the suit is totally devoid and bereft of merits. Hence, he sought for dismissal of the same.

9. The trial Court framed the following issues.

1. Whether the plaintiff is entitled to claim 1/5th share in the partition of the suit property?
2. Whether the plaintiff is entitled to the relief of declaration of the sale deed dated 28.05.2002 as null and void ?
3. Whether the plaintiff is entitled to the relief of declaration of sale deed dated 26.08.2002 as null and



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void ?

4. Whether the plaintiff is entitled to the relief of declaration of sale deed dated 14.03.2006 as null and void ?
5. Whether the plaintiff is entitled to the relief of declaration of sale deed dated 11.05.2007 as null and void ?
6. Whether the plaintiff is entitled to claim relief of permanent injunction as prayed for?
7. To what other relief ?

10. During trial, on the side of the plaintiff, the plaintiff examined herself as PW1 and one Arun Kumar, the authorized representative of SRO, Chengalpattu has been examined as PW2 and exhibits Ex.A1 to Ex.A32 were marked. On the side of the defendants, DW1 to DW4 were examined and Ex.B1 to Ex.B3 were marked.

11. The trial Court, after a full fledged trial, finding that the properties are self acquired properties of Govindasamy Naicker, who died intestate, held that the plaintiff is entitled to 1/5th share in the suit schedule mentioned properties and also declared the sale deeds as null and void.



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Aggrieved against the same, the 19th defendant has filed the appeal in A.S.No.16 of 2021 on the file of the Additional Subordinate Court, Chengalpattu.

12. The first appellate Court framed the following points for consideration.

1. Whether the suit properties are the self-acquired properties of the plaintiff's father Govindasamy Naicker?
2. Whether the petition filed under Order 41 Rule 27 of CPC in I.A.No.2 of 2022 to receive additional document on the side of the 1st respondent/plaintiff can be allowed or not?
3. Whether the plaintiff is entitled to the relief of partition and separated possession as prayed?
4. Whether the plaintiff is entitled to the relief of declaration of sale deeds dated 28.05.2002 registered in favour of 20th defendant by the 13th to 16th defendants as null and void?
5. Whether the plaintiff is entitled to the relief of declaration of sale deed dated 26.08.2002 registered in favour of 18th defendant by the 13th to 16th defendants as null and void?



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6. Whether the plaintiff is entitled to the relief of declaration of sale deeds dated 14.03.2006 registered in favour of 19th defendant by the 2nd, 4th and 5th defendants as null and void?
7. Whether the plaintiff is entitled to the relief of declaration of sale deeds dated 11.05.2007 registered in favour of 17th defendant by the 1st defendants as null and void?
8. Whether the plaintiff is entitled to the relief of Permanent Injunction as prayed?
9. Whether the Judgment and Decree in O.S.NO.323 of 2008 dated 04.12.2020 passed District Munsif, Chengalpattu warrants interference?
10. Whether the Appeal Suit can be allowed or not?

13. During the pendency of the first appeal, the plaintiff/R1 had filed an application in I.A.No.2 of 2022 under Order 41 Rule 27 of CPC to receive the original sale deed dated 29.05.1970 registered on the file of Sub Registrar Office, vide document No.1160 of 1970 as additional document on the side of the plaintiff. She had stated that reason for filing the said application at that stage, is that due to her old age, she could not remember whether she was having the custody of the original sale deed or not and only



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during the search of the old records in her residence, she got the original sale deed and thereby, she filed the petition, during the first appeal stage. The appellant/19th defendant had raised objection stating that the first respondent/plaintiff has failed to produce either the original or photo copy of the document before the trial court and the said document has been produced after a lapse of 13 years. Whereas, the appellate Court, finding that sufficient ground was shown for not producing the document, had allowed the said application and marked the said document as Ex.A33.

14. Further, the first appellate Court, finding that the suit properties are the self acquired properties of Govindasamy Naicker and also finding that as per Section 8 of Hindu Succession Act, the plaintiff succeeds to the suit properties of the Govindasamy Naicker, who died intestate and she is entitled to the relief of partition and separate possession of 1/5th share prayed, had dismissed the appeal suit by confirming the order passed by the trial Court. Aggrieved against the same, the present Second Appeal has been filed.

15. Learned counsel appearing for the appellant/19th defendant



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submitted that the appellate Court had erred in arriving at a conclusion, without affording an opportunity of cross examining the plaintiff/R1, with regard to the document. He also submitted that there had been a delay of 13 years in marking and producing the document at the appellate stage and the first appellate Court ought not to have allowed both interlocutory application and the Appeal Suit and thereby, he seeks to set aside the judgment and decree of the appellate Court and to remand the matter to the trial Court for permitting the appellant to cross examine the plaintiff.

16. Learned counsel for the first respondent/plaintiff submitted that the document is not a new document and the suit was based only on the above document (Ex.A33) dated 29.05.1970, whereby, the father of the plaintiff Govindasamy Naicker and the predecessor of the other defendants, had purchased the properties and it is the self acquired properties of the said Govindasamy Naicker. He further submitted that the plaintiff, before the trial Court had also let in evidence to prove that the original sale deed could not be marked during the trial and subsequently, during the search in house she was able to find out the document and thereby, it was marked during the first appeal, before the first appellate Court. He also submitted that the trial Court



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as well as the appellate Court, finding that the properties are self acquired properties of Govindasamy Naicker, had given 1/5th share of the suit schedule mentioned properties to the plaintiff. Further, after the appellate court confirming the order passed by the trial Court, the final decree proceedings were initiated and the Commissioner was appointed and 1/5th share has also been allotted to the plaintiff. He also submitted that no substantial question of law has been involved in this case and thereby, sought for dismissal of the second appeal.

17. Heard the learned counsel appearing on both sides and perused the materials available on record.

18. It is the case of the plaintiff/first respondent, who is the daughter of one Govindasamy Naicker, that her father had purchased the property through a registered sale deed dated 29.05.1970 and he died intestate on 16.07.1970, leaving behind his legal heirs and that she was entitled to 1/5th share in the properties of her father. The trial Court, based on the evidence furnished by her, had decreed the suit and also set aside the subsequent sale deeds. Against which, one of the subsequent purchaser/19th



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defendant had filed the Appeal Suit No.16 of 2021 before the Additional Subordinate Judge, Chengalpattu. During the course of the appeal, the plaintiff had filed the application to mark the additional document which is the original of the sale deed dated 29.05.1970 and also contented that due to her old age, she could not remember where the document was and thereby, it was not filed before the Court below and while, searching for some other document, the original was recovered and thereby, she has filed the application for marking it as an additional document and first appellate Court, on taking into consideration the original document and the findings of the lower Court, had dismissed the Appeal Suit confirming the order passed by the Trial Court.

19. The entire dispute between the parties revolves around the question as to whether the suit properties are self acquired properties of Govindasamy Naicker, the father of the plaintiff and predecessors of defendants 1 to 16 or ancestral properties.

20. A perusal of the judgment and decree of the courts below reveals that the Trial Court had appreciated the stand taken by the plaintiff



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that the she could not trace and produce the parent document through which, the said Govindasamy Naicker had purchased the suit properties, to prove that the suit properties are his self-acquired properties, however, she had produced the Encumbrance Certificate, Ex.A32 to prove the same and she had also submitted a letter, Ex.A24 received from the Sub Registrar concerned in reply to her request for a copy of the document, wherein, she had been informed that the Register containing information about the registration of the said document has been sent to court with regard to a suit in O.S.No.331 of 1972.

21. Such being the case, the first appellate Court had also appreciated that during pendency of the Appeal Suit, the plaintiff had taken initiative to trace and produce the parent document by filing an Application and marked the same as Ex.A33 and thereby, without leaving any room for ambiguity, the fact that the suit properties are self acquired properties of Govindasamy Naicker has been proved and the claim of the defendants that they are the ancestral properties has to fall to the ground.

22. Having carefully analysed the materials available on record



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including the judgments of both the Courts below, this Court is of the view that no substantial question of law is involved to admit this present second appeal.

23. The Hon'ble Apex Court in ***Kirpa Ram (D) Tr.Lrs. vs Surender Deo Gaur (2020 Scc OnLine SC 935)*** has categorically held as under:-

"23. Sub-section (1) of Section 100 of the Code contemplates that an appeal shall lie to the High Court if it is satisfied that the case involves a substantial question of law. The substantial question of law is required to be precisely stated in the memorandum of appeal. If the High Court is satisfied that such substantial question of law is involved, it is required to formulate that question. The appeal has to be heard on the question so formulated. However, the Court has the power to hear appeal on any other substantial question of law on satisfaction of the conditions laid down in the proviso of Section 100 of the Code. Therefore, if the substantial question of law framed by the appellants are found to be arising in the case, only then the High Court is required to formulate the same for consideration. If no



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such question arises, it is not necessary for the High Court to frame any substantial question of law. The formulation of substantial question of law or re-formulation of the same in terms of the proviso arises only if there are some questions of law and not in the absence of any substantial question of law. The High Court is not obliged to frame substantial question of law, in case, it finds no error in the findings recorded by the First Appellate Court."

24. In view of the above, when no question of law much less substantial question of law arises for consideration, the Second Appeal fails and the same is dismissed at the admission stage itself, by confirming the concurrent findings rendered by the Courts below. No costs. Consequently, the connected Miscellaneous Petition is closed.

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ham/dpa

Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No



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A.D.JAGADISH CHANDIRA.,J.

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To

1. The Additional Subordinate Judge, Chengalpattu.
2. The District Munsiff, Chengalpattu.
3. The Section Officer, VR Section, High Court of Madras.

***S.A.No.604 of 2023
and C.M.P.No.19274 of 2023***

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