



S.A.No.410 of 2002

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 17.12.2024

Coram:

THE HONOURABLE Mrs.V.BHAVANI SUBBAROYAN

S.A.No.410 of 2002

1. Sri Brahadambal Agency,
a partnership firm, rep. By its Managing Partner, Kumarasamy
34, Housing Unit, Rajagopalapuram
Pudukottai.
 2. R.A.Kumarasamy
 3. Indira
 4. Shanmugham
 5. S.Geetha
 6. Vallinayagam
 7. S.Vanamamalai
- ...Appellants

[A.R.Dharmalingam is recognized as power of attorney on behalf of the appellants 1 to 7 dated 28.10.2024 made in C.M.P(MD)No.8592 of 2024]

[Appellants 1 to 7 are represented through their power of attorney Mr.A.R.Dharmalingam, S/o.Late M.Ramakrishnan, Plot No.1379C, Door No.15C, Golden Villa, 6th Street, I Block, Vallar Kudiyeruppu, 18th Main Road, Anna Nagar West, Chennai – 600 040]

[Appellants 5 to 7 declared as major and guardianship discharged vide court order dated 22.12.2015 made in M.P.(MD) 1 of 2015 in S.A.No.410 of 2002 by CSKJ]

Vs.

1. S.Ramasamy Chettiar (died)
2. Sethu @ Raghavan
3. R.M.Subramanian (died)

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4. R.M.Chidambaram
5. R.M.Sellappan
6. Adaikkammal Achi
7. Sambantham Chettiar
8. R.M.Lakshmi Achi
9. P.Mallika
- 10.S.Seethalakshmi
- 11.S.Swaminathan
- 12.S.Lakshmi

...Respondents

[Respondents 8 & 9 brought as Lrs of deceased 1st respondent as per the order of Court dated 9.12.2015 made in M.P.(MD) No.1 to 3 of 2014 in S.A.No.410 of 2002 by CSKJ]

[Respondents 10 to 12 are brought on record as Lrs of the deceased 3rd respondent vide order dated 27.01.2022 made in C.M.P(MD)Nos.10990, 10993 & 10994 of 2021]

Prayer: Second Appeal filed under Section 100 of Code of Civil Procedure against the Judgment and Decree of the learned Principal District Judge, Pudukottai dated 15.12.1999 made in A.S.No.77 of 1995 confirming the Judgment and Decree of the learned Subordinate Judge, Pudukkottai dated 13.09.1994 made in O.S.No.163 of 1987.

For Appellants : Mr. T.M.Pappiah [A1 to A4]

For Respondents: Mr.N.Balakrishnan for R2
Mr.S.Parthasarathy for R10 and R11
No appearance for R4, R5 and R9

J U D G M E N T

The present Second Appeal is filed against the Judgment and Decree of the learned Principal District Judge, Pudukottai dated 15.12.1999 made in A.S.No.77 of 1995 confirming the Judgment and Decree of the learned Subordinate Judge,



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Pudukkottai dated 13.09.1994 made in O.S.No.163 of 1987.

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2. The appellants herein are the plaintiffs in the suit in O.S.No.163 of 1987 and the respondents herein are the defendants therein.

3. The brief facts of the case are as follows:

(i) Initially, the Appellants / Plaintiffs-firm filed Original Suit in O.S.No.163 of 1987 for partition of suit properties in A and B Schedule properties by metes & bounds and to allot the 3/5th share to the Appellants/Plaintiffs. The Appellants/Plaintiffs purchased half share from the 7th defendant registered as Document No.894 of 1983 (Ex. A9) dated 16.02.1983 and purchased 1/10th share from 5th defendant registered by sale deed by Document No.992 of 1983 (Ex.A.11) dated 19.10.1983. The case of the Appellants/plaintiffs in the original suit is that the suit property comprises of agricultural lands measuring an extent of about 65 acres in Nathampennai village in Pudukottai as Item Nos. 1 to 11 in the suit 'A' schedule property and a farm house and building is shown as suit 'B' schedule property. Originally, the suit 'A' and 'B' schedule properties to an extent of 166 Acres in total are owned by one Raman Chettiar, grandfather of 1st and 7th Defendants herein. The suit 'A' schedule property in Item Nos.1 to 6 of the properties is a self-earned

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property by Raman Chettiar and Item Nos.7 to 11 are the ancestral properties of Raman Chettiar. Raman Chettiar died leaving his two sons, namely, Chellappa Chettiar and Swaminantha Chettiar to succeed his estate. All the properties of Raman Chettiar remain undivided and was enjoyed by both the sons during their lifetime.

ii) Subsequently, Chellappa Chettiar died issueless and Swaminathan Chettiar has two sons who is the 1st defendant i.e., Ramasamy Chettiar and 7th defendant herein i.e., Sambantham Chettiar. Swaminathan Chettiar had given the properties in Rajavayal to the 7th defendant and it was measured about 83 acres out of 166 Acres, where 53 acres were acquired by Government remaining 30 acres was sold to various other persons as plots. At the time of partition, Sambantham Chettiar, the 7th defendant was given Rajavayal in excess so Ramasamy Chettiar decided to give 10 acres land to 1st defendant in Pallathuvayal village out of total extent of land measuring 74.07 acres leaving behind the 65.87 acres were kept common. The Appellant/Plaintiff purchased $\frac{1}{2}$ share from 7th defendant from A schedule property by registered sale deed dated 16.02.1883 registered as document No.894 of 1883. Further the appellant/ plaintiff purchased $\frac{1}{10}$ ($\frac{1}{5}$ th in the share of $\frac{1}{2}$) from 5th defendant by registered sale deed dated 19.10.1883 registered as Document



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iii) The 1st defendant filed a written statement denying the allegations stated by the plaintiff. The 1st plaintiff is not a registered firm. The suit property belongs to Raman Chettiar grand father of 1st defendant who had two sons one Saminanthan Chettiar and Chellapa Chettiar. The allegation that Chellapa Chettiar died issueless are false. The 7th defendant was given in adoption to the widow of Chellapa Chettiar according to the customs and conventions. Then Saminanthan Chettiar allotted Rajavayal property measuring about 83 Acres being the half share of the property of Raman Chettiar was allotted to the 7th defendant as adopted son of Chellapa Chettiar and the other half share in Pallathuvayal was allotted to 1st defendant. Therefore, the first and seventh defendant were divided brothers. The allegation that they were undivided brothers is false. All the properties in Pallathuvayal belonged to the first defendant. 7th defendant, because he was given in adoption, did not have any right in the suit property. The allegation that one Soundararajan was an Agent of the 7th defendant and he was collecting the share of the 7th defendant from the first defendant are all false. The allegation that the 7th defendant attempted to get himself impleaded in O. P. 5/84 in the Sub Court is true and the same was dismissed. Therefore 7th defendant could not file a suit for

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partition and he joined hands with the plaintiff, created a document as if it was a sale deed in favour of the plaintiff and they have instigated the plaintiff to file a suit.

Further, it is also stated that the sale deed executed by the 5th defendant has been executed under influence of seventh defendant and on the promise to get him a job in Indian Bank and therefore the sale deed is void and prayed to dismiss the suit.

iv) On the basis of the rival pleadings made on either side, the trial court, after framing necessary issues and after evaluating both the oral and documentary evidence, the trial court has dismissed the suit stating the reasons that the Appellant/Plaintiff failed to prove that D7 is entitled to any share in the 'A' schedule properties and rejected the contention of the Appellants/Plaintiffs that there is no adoption on erroneous grounds. Being aggrieved by the judgement and decree passed by the trial court dated 13.09.1994 the Appellants/Plaintiffs preferred Appeal in A.S.No.77 of 1995 challenging the same. The First Appellate Court, after hearing both sides and upon reappraising the evidence available on record, dismissed the appeal suit by its order dated 15.12.1999 on the grounds that 7th defendant was validly given in adoption and that the 7th defendant has no share in the suit properties and thus the plaintiffs are not entitled to the relief of partition by confirming the trial courts order. The judgement and order passed by first Appellate



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Court came to be challenged before the Hon'ble High Court by filing Second Appeal in S.A.No.410 of 2002. The Hon'ble Court vide its order dated 29.01.2016, allowed the second appeal and set asides the judgement and orders of the courts below and allowed partition. After the earlier judgement in this second appeal dated 29.01.2016, 2nd and 3rd Respondent/ Defendant filed a petition for rehearing of the matter with delay which was dismissed by this Hon'ble Court. Against the same, S.L.P.(Civil) No.904 & 905 of 2021 were filed before the Hon'ble Supreme Court by the 2nd defendant and the same were allowed and the Hon'ble Apex Court ordered for remanding of the matter to the file of this Court. Then this court after giving opportunities to the respondent passed an order dated 28.07.2022 by allowing the second appeal. Aggrieved over the same the 2nd respondent filed S.L.P.(Civil) in Civil Appeal No. 4585 of 2024 wherein the Hon'ble Apex Court vide its order dated 01.04.2024, set asides the impugned judgement dated 28.07.2022, passed by the High Court and remanded the matter back to the High Court for disposal afresh on merits and in accordance with law.

3. This Court, on hearing the submissions of the learned counsel on either side and the facts and circumstances of the case, is inclined to frame the following

Substantial Questions of Law for consideration:-

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(i) Whether the issue of adoption is justified by the lower courts by upholding it as legal from sufficient plea and proof regarding adoption? If so, Whether the lower Appellate Court is right in passing orders by examining single witness to prove adoption and not examining any other independent witness other than DW1 to prove adoption as legal?

(ii) Whether the shares are liable to be divided among 1st and 7th defendant if adoption is not proved?

(iii) Whether the 7th defendant cannot be divested of his right of succession as the grandson of Raman Chettiar to the estate of Raman Chettiar irrespective of whether he was given in adoption or not as per section 12(c) of the Hindu Adoption & Maintenance Act?

4. It was contended by the plaintiffs that the 7th and 5th Defendants have remained ex-parte in the suit, which only supports the case of the Appellants and not the Defendants, the finding of both courts below that they did not enter the witness box is without legal basis. The Appellants/ plaintiffs contends that the adoption of 7th defendant as son of late Chellappa Chettiar is only based on surmises and conjectures and there is neither specific pleading nor evidence and the



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defendants who set up the plea that 7th defendant was given in adoption has not proved with such definite pleading or legal evidence. Also, the courts below misguided itself in casting the burden on the appellants to prove that there was no adoption and erroneously gave such a finding. The court below has misconstrued and mixed up the survey numbers relating to the properties said to be allotted in the alleged partition after the alleged adoption and the persons connected therewith.

5. Further, according to the Appellants, there is no such document to prove that 7th defendant is the adopted son of ChellapaChettiar and the First Appellate Court was in complete error in finding that there are many such documents. There is inconsistency in the evidence of DW1 regarding the date and mode of adoption. Further, there is no other independent witness to speak about the alleged adoption other than the interested testimony of DW1 which is full of material contradictions. Both the Courts below failed to appreciate the contention of the counsel for the Plaintiffs, who appeared before them that 7th defendant had vested right in respect of his share in the suit schedule properties, as they were purchased by his grandfather Raman Chettiar and by Law of Succession as grandson he has the vested right for a share in the said property irrespective of whether he is given in adoption or not by his father Swaminathan Chettiar and neither Swaminathan



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Chettiar nor the elder brother of 7th defendant, viz. Ramasamy Chettiar, 1st defendant can deprive his right of share in the said properties and protected under Section 12(c) of the Hindu Adoptions and Maintenance Act, 1956. When both courts below have found that the Appellants are third parties outside the families of the Defendants and cannot give direct evidence, it is the Appellants who must be given the benefit of indirect evidence and not the Defendants and the material contradictions found in DW1's evidence were not taken into consideration and DW1's evidence relating to adoption and complete partition gets discredited and their defence plea based on adoption and complete partition falls to the ground. The First Appellate Court erred in holding that Exs. A9 and A11 sale deeds are sham and nominal and not true because consideration was postponed. However, the documents of sale deed can be registered by paying part consideration as per Section 54 of Transfer of Property Act.

6. On the other hand, the contention of the 2nd respondent is that in view of adoption of 7th defendant to Chellapa Chettiar under Section 12 of the Hindu Succession and Maintenance Act, 7th defendant has no more ties with the natural family. During enquiry many documents are marked, out of which one was

registered Power of Attorney deed dated 18.04.1977 executed by 7th defendant

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describing him as adopted son of Chellapa Chettiar to maintain his share of property and others are the receipts of the documents issued at the time of his marriage showing him as an adopted son of Chellapa Chettiar. The custom of adoption just before the marriage in the Nagarathar community as pleaded by the defendants was proved and this custom, which has been recognised by the courts, need not be proved as per Section 57 of Indian Evidence Act, 1872.

7. That apart, the extent of property mentioned in S.No.97 in the sale deed is 30 acres, however, in the suit it is shown as 21.80 acres out of 30 acres. The reason behind getting sale deed and as well as showing the property in S.No.97/2 as 21.80 acres instead of 30 acres in the agreement entered into by the plaintiffs with 1st defendant dated 12.12.1982, which was cancelled and thereafter the said 8.20 acres was sold to Nizam family. The oral partition of Raja Vayal and common possession of Pallathuvayal properties as pleaded by the plaintiffs was not proved and no evidence adduced by the plaintiffs. PW-1 is one of the partners not competent to speak about the oral partition in the family of defendants, that too as against the evidence of DW-1. Both the courts have held that the partition pleaded in the plaint is not proved through valid evidence and 7th defendant, who is the vendor of plaintiffs did not come to box. The burden is upon the plaintiffs under Sections 101,



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102 and 103 of the Indian Evidence Act, 1872 but they failed to prove. No question of law was raised regarding their burden and the finding against them, hence they admit the judgments in that regard and their appeal cannot be entertained. The respondents contend that the family owned 166 acres and one of the sons of Raman Chettiar namely ChellappaChettiar had no issues, while so the entire property to be brought in the suit for partition and it is not done so, hence the suit is bad for partial partition. Also, the 7th defendant did not deny the same and conveniently kept away from the proceedings. Even though the 7th defendant had liberty to file a suit to establish his rights in respect of the subject matter of succession certificate also, but he has not filed any proceedings, however, sold the property to the plaintiffs and they are indirectly attempting to get property without proving the fact. Though there is no res-judicata, rule of estoppel will apply in view of the conduct of 7th defendant, keeping away from the proceedings.

8. The learned counsel appearing for the Appellants / Plaintiffs relied upon the following judgements in support of his contention:

i) The Judgment of Hon'ble Supreme Court in ***Ratanlal Allis BabulalChunilalSansuka vs. SundarabaiGovandhandasSamsuka(Dead) through Legal representatives and Ors*** [2018 (11) SCC 119] wherein at Paragraph No.20 it is

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held that:

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"20. At this juncture it would be necessary to observe the law laid down by this Court in numerous cases that the burden of proving adoption is a heavy one and if there is no documentary evidence in support of adoption, the Court should be very cautious in relying upon oral evidence. This Court held so in *KishoriLal v. Chaltibai* [*KishoriLal v. Chaltibal*, AIR 1959 SC 504]. We can do no better than to quote the relevant passage from the above judgment which reads as under: (AIR p. 508, para 7)

"7. As an adoption results in changing the course of succession, depriving wives and daughters of their rights and transferring properties to comparative strangers or more remote relations it is necessary that the evidence to support it should be such that it is free from all suspicions of fraud and so consistent and probable as to leave no occasion for doubting its truth. Failure to produce accounts, in circumstances such as have been proved in the present case, would be a very suspicious circumstance."

ii) The learned counsel relied on para 4 of **Rahasa Pandiani v. Gokulananda Panda (1987) 2 SCC 338: AIR 1987 SC 962** wherein the Hon'ble Apex Court held that:

"4. Before we advert to the relevant circumstances, we consider it appropriate to advert to a note of caution sounded by this Court as early as in 1958 in *KishoriLal v.*

Chaltibai. We can do no better than to quote the relevant passage from the judgment of

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Kapur, J.:

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“As an adoption results in changing the course of succession, depriving wives and daughters of their rights and transferring properties to comparative strangers or more remote relations it is necessary that the evidence to support it should be such that it is free from all suspicion of fraud and so consistent and probable as to leave no occasion for doubting its truth. Failure to produce accounts, in circumstances such as have been proved in the present case, would be a very suspicious circumstance. The importance of accounts was emphasised by the Privy Council in Sootrugun v. Sabitra"; in Diwakar Rao v. Chandanlal Rao; in Kishorilal v. Chunilal; in LalKunwar v. CharanjiLal and in Padamlal v. Fakira Debya.”

When the plaintiffs relies on oral evidence in support of the claim that he was adopted by the adoptive father in accordance with the Hindu rites, and it is not supported by any registered document to establish that such an adoption had really and as a matter of fact taken place, the court has to act with a great deal of caution and circumspection. Be it realized that setting up a spurious adoption is not less frequent than concocting a spurious Will, and equally, if not more difficult to unmask and the court has to be extremely alert and vigilant to guard against being ensnared by schemers who indulge in unscrupulous practices out of their lust for property. If there are any suspicious circumstances, just as the propounded of the Will is obliged to dispel the cloud of suspicion, the burden is on one who



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claims to have been adopted to dispel the same beyond reasonable doubt. In the case of an adoption which is not supported by a registered document or any other evidence of a clinching nature if there exist suspicious circumstances, the same must be explained to the satisfaction of the conscience of the court by the party contending that there was such an adoption. Such is the position as an adoption would divert the normal and natural course of succession. Experience of life shows that just as there have been spurious claims about execution of a will, there have been spurious claims about adoption having taken place and the court has therefore to be aware of the risk involved in upholding the claim of adoption, if there are circumstances which arouse the suspicion of the court and the conscience of the Court is not satisfied that the evidence preferred to support such an adoption is beyond reproach".

iii) In the case of **Baskaran v. Mathialagan and others**, in **A.S.No.54 of 2013 dated 11.03.2020**, this Court held that two important conditions as mentioned in Sections 7 and 11 of the Act are the consent of wife before a male Hindu adopt a child and proof of the ceremony of actual giving and taking in adoption. There is no proper pleading and evidence let in to prove the case. So, the appeal was dismissed.

iv). In the case of **Dahiben v. Arvindbahi Kalyanji Bhanusali (Gajra) and others reported in (2020) 7 SCC 366**, the Hon'ble Apex Court observed that actual payment of entire sale price at the time of execution of sale deed not essential



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condition for completion of sale. Sale deed can be registered even upon part of payment of sale price whereupon title would pass to transferee. Nonpayment of remaining part of sale price would not invalidate sale.

v). In the case of **Kaliyaperumal Vs. Rajagopal and another reported in (2009) 4 SCC 193**, the Hon'ble Apex Court held that under Section 54 of Transfer of Property Act execution and registration of sale deed evidence prima facie completion of transfer of title in favour of the purchaser. Mere non passing of consideration may not prevent passing of title as consideration could be payable in future also.

9. The learned counsel appearing for the 10th and 11th respondents contends that it is the trite of law that if any one of the parties to the litigation dies, the same will get abated if the legal heirs are not brought on record within 90 days. The appeal is abated as against the respondents 7 and 12. It is contented that Appellants/plaintiffs are third parties and they have no pre-existing rights in the suit properties so they cannot maintain a suit for partition. The 7th respondent / defendant having not set the law in motion so as to get a declaration and the order in Ex.B-2 having attained finality, the same would estop the 7th respondent from advancing a case that he continues to be the son of late Swaminathan Chettiar, where



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same position applies to the Appellants/Defendants as that of the 7th Respondent whose legal status is in question and has not been declared. The suit as framed is premature and without getting the legal status of the 7th defendant, no claim can be lodged over the suit properties by either the 7th defendant or the plaintiffs and on that score, the Suit as well as this Appeal are not maintainable and that the plaintiffs are not entitled to the reliefs as prayed for in the plaint.

10. Upon considering the pleadings, evidences and documents available on record and the arguments put forth by the learned counsels on either side, this Court taken this second appeal for final disposal on merits.

11. As far as the First Substantial Question of law is concerned, from the documents available on record the lower courts erred in proving 7th defendant as the adopted son of Chellapan Chettiar without proper documents to prove the same and was in complete error in finding that there are many such documents. The rejection of Ex.A6 dated 30.01.1979 by the courts below admittedly in the handwriting of the 1st defendant did not show 7th defendant as son of Chellappa Chettiar but only son of Swaminathan Chettiar, which clearly proves that there was no valid adoption. The Ex.A8 being certified copy of Ex.A7 being a recording of



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family arrangement in which 7th defendant is shown as son of Swaminathan Chettiar need not be compulsorily registered and can be looked into for the collateral purpose of showing that there was no such valid adoption into another family. There is inconsistency in the evidence of DW1 regarding the date and mode of adoption. Moreover, there is no other independent witness to speak about the alleged adoption other than the interested testimony of DW1 which is full of material contradictions. The defendants have failed to prove as to whether Chellappa Chettair gave consent to his wife to adopt a son for him. In the absence of such proof, it is irresistible to hold that the validity of adoption has not been proved in accordance with law. The courts below erred in justifying the reasons for valid adoption. As the lower courts only relied on proof of adoption as DW1 testimony and not any documents to validate adoption as legal.

12. Further the courts below have not appreciated the pleadings and evidence on record put forth by Appelants/plaintiffs, but wrongly assuming certain facts which are not in existence and vitiated the facts by non-consideration of relevant materials. The court below erroneously proceeded the matter and recorded its findings which are perverse. The lower courts not considered deposition made by DW1 admitting that there was no ceremony took place at the time of adoption,



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which clearly shows that there was no adoption took place. It is basic principle of law that natural parents should be present to give their son in adoption. The admission by DW1 that his mother was not present at the time of adoption by the widow of ChellapaChettiar falsifies the case of adoption as propounded by the defendants. The pleading of 1st defendant that the adoption was during the year 1955-1956 but in the cross examination of DW1, he states that the adoption was in the year 1963. This material contradiction disproves his contention that there was an adoption and his evidence that he was present when such adoption of 7th defendant was made cannot be believed because of several contradictions brought out in the cross examination of DW1. Except the interested testimony of the 1st defendant, no one has been examined to prove the factum of adoption. No independent witnesses have been examined to prove the custom. It is well settled that when a custom, set up by the person is contrary to the general law, the burden lies on the person, who sets up the custom to prove its existence. In the absence of a plea or any direct evidence as to the existence of a particular custom in the matter of adoption, which is being followed by the people belonging to the particular community, it is unable to accept as customary adoption which is vaguely pleaded. To prove adoption, placing burden on the plaintiffs is completely against the well settled principles of



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law and the onus is on the part of the person, who claims adoption as *défense* to prove his case and in the present case, the defendants had pleaded the story of adoption and there is no question of the plaintiffs proving the contrary. The courts below misdirected themselves on shifting the onus on the plaintiffs to prove the contrary. The courts below erroneously only examining DW1 witness passed orders without examining any other witness, who were present at the time of giving adoption. From the evidence available on records, it clearly shows that there are lots of contradictions in the evidence of witnesses on all material aspects of adoption.

13. As per Hindu Adoption and Maintenance Act, as far as adoption is concerned, the actual giving and taking of adoption to be proved. In the case of **Baskaran Vs. Mathialagan and others**, in A.S.No.54 of 2013 dated 11.03.2020, this Court held that two important conditions as mentioned in Sections 7 and 11 of the Act are the consent of wife before a male Hindu adopt a child and proof of the ceremony of actual giving and taking in adoption. There is no proper pleading and evidence let in to prove the case. So, the appeal was dismissed. The defendants have failed to prove the actual giving and taking of adoption as mandated in the above ruling. Thus, there is neither plea nor proof regarding the case of adoption set up by the defendant 1 and 2 and in absence of such plea the court below is not right in proving the case of adoption and is contrary to the law.



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14. With regard to the Second Substantial Question of Law, it is clear from the evidence available on records and contentions placed by the Appellants/Plaintiffs that the suit schedule properties do not find place in any document of alleged earlier partition, is to be taken as forming common property yet to be partitioned and therefore 5th and 7th defendants have clear right to sell their undivided share to the appellants. The courts below erred in finding that Ex.A8 assumes much significance that DW1 had admitted the execution of the said document, where it was stated that father shall remain as kartha of the joint family and that after his life time, the joint family properties shall be partitioned between the defendants equally. It clearly proves that 7th defendant was the son of SwaminathanChettair. So, it is clear that adoption was not proved and 7th defendant is the son of SwaminathanChettair. So, 7th defendant is eligible for 5/10 i.e., 32 acres shares and 5th defendant is eligible for 1/10 i.e., 6.58 Acres share from his father (1st defendant) shares. The said SwaminathanChettiar divided his share (i.e., 83 Acres) during his lifetime to his 1st wife to an extent of 16 Acres and to his 2nd wife 20 Acres and 10 Acres to his son i.e., 1st defendant and he was in enjoyment of remaining property, viz., 37 acres.



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Thereafter, Chellapachettiyar regained the property which he had given to his 1st and 2nd wives after their demise, thereby he was in enjoyment of property (37+16+20= 73) to the tune of 73 acres. The 1st defendant, son of ChellappaChettiyar, sold 8.20 Acres to Nizam family, out of 30 acres from the Survey No. 97, therefore, $73.43 - 8.2 = 65.23$ Acres was in common enjoyment. The 7th defendant sold his half share in the suit property out of 65.23 Acres, $(65.23 - \frac{1}{2}\text{share}=32.61)$ 32.61 acres and the 5th defendant sold $\frac{1}{10}$ th share [i.e., $\frac{1}{5}$ th share in $\frac{1}{2}$ share] $(32.61 - \frac{1}{10}\text{th share}=6.58) = 6.58$. Hence, the 7th defendant is entitled for equal share from his father's property. The shares are liable to be divided among D1 and D7.

15. As far as Third Substantial Question of Law is concerned, the trial court as well as first appellate court have held that the findings in the Judgment dated 07.10.1987 in O.S.No.86 of 1985 passed by the Sub Court against the appellants that the sale deed executed in their favour by the 7th defendant is sham and nominal and whether Appeal was pending or not has now been reversed by allowing A.S.No.8 of 1988 against O.S.No.86 of 1985 by this Court by Judgment dated 23.07.2001 and L.P.A.No.151 of 2002 filed by the 1st defendant was dismissed for default on 27.02.2014 and therefore, the said Judgment copies in A.S.No.8 of 1988 and L.P.A.No.151 of 2002 are considered for deciding the above Second appeal. It is clear



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from the evidence of lower court judgment in O.P.No.5 of 1984 where the court below has left open the issue of 7th defendant as natural son of Swaminathan Chettiar to be decided in the suit. Therefore, the respondents cannot contend that the order (Ex.B2) attained finality. It is no doubt that 7th defendant is the biological son of Swaminathan Chettiar and he need not prove his legal status. Further, as per Section 12 (c) Adoption and Maintenance Act, adoption does not take away property rights from anyone, which is entitled to them before the adoption.

16. From the above, this Court is of the view that the judgements and decrees of the courts below are not accompanied with sufficient reasons, in which, this Court is inclined to make interference. Accordingly, the substantial questions of law framed are ordered as against the respondents/defendants and in favour of the Appellants/Plaintiffs.

(*)17. In view of the above, this Court is inclined to allow the claim of the appellants / plaintiffs for partition and specific performance in the share of 5th and 7th defendants, the plaintiffs are entitled for 39.16 cents.



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In view of the above, the Second Appeal is allowed and the preliminary decree is passed as prayed for.

(*)Amended as per the order of this Court, dated 08.01.2025.

Sd/-

Assistant Registrar(C.S-III)

// True Copy //

/02/2025

Sub Assistant Registrar
(CS- I/ II / III / IV)

ssd

To

1. The Principal District Judge,
Pudukottai.

2. The learned Subordinate Judge,
Pudukkottai.

Copy to

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+2CC to Mr.T.M.Pappiah, Advocate
SR.No.75143 dated 18.12.2024



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17.12.2024

KVL (06.02.2025) 25P/ 7C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023.