



S.A.No.1159 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 25.06.2025

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

S.A.No.1159 of 2008

and

M.P. No. 1 of 2008

1. Pusaimani
2. Thangadurai

... Appellants

Versus

1. Ramalingam (Died)
2. Malarkodi
3. R.Latha
4. R.Elayaraja
5. R.Ashok Kumar

... Respondents

(R1 died. R3 to R5 are brought on record as LR's of deceased R1 vide order of Court dated 11.01.2024 made in CMP.No.10446, 10449, 10451 of 2021 in SA.No.1159/2008 (GAMJ).

Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 27.09.2007 passed in A.S.No.149 of 2006 on the file of the learned Principal Sub Judge, Vridhachalam confirming the judgment and decree dated 29.08.2006 passed in O.S.No.487 of 2000 on the file of the learned Principal District Munsif, Vridhachalam.

For Appellants : Mr. T. Sundaravadanan

For Respondents 3 and 5 : Mr. P. Kannan Kumar
For Respondent 4 : Mr. B.K. Girish Neelakandan
: R-1 Died
: R-2 Dismissed vide Court
order dated 14.02.2009



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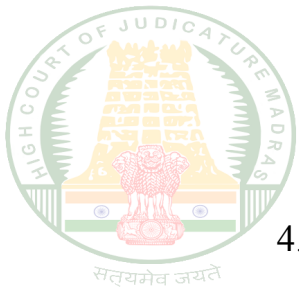
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JUDGMENT

This Second Appeal is filed against the judgment and decree dated 27.09.2007 passed in A.S.No.149 of 2006 on the file of the learned Principal Sub Judge, Vridhachalam confirming the judgment and decree dated 29.08.2006 passed in O.S.No.487 of 2000 on the file of the learned Principal District Munsif, Vridhachalam.

2. The Appellants before this Court are the Defendants in O.S.No.487 of 2000 on the file of the learned Principal District Munsif, Vridhachalam. The suit was filed by the Plaintiff seeking declaration of title and for permanent injunction against the Defendants.

3. The Defendants claim ownership of the property on the basis of the sale deed executed by one Palanimuthu. The Defendants 1 and 2 claimed that they had purchased the property from the brother of the Plaintiff, Palanimuthu. The suit property was allotted to the share of the Palanimuthu through the oral partition in the family of the Plaintiff. From the date of purchase, the Defendants had been in possession and enjoyment of the suit property and sought dismissal of the suit.



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4. On the pleadings of the Plaintiff and Defendants, the learned

Principal District Munsif, Vridhachalam, had framed following issues:-

- (i) Whether the Plaintiff is entitled to declaration of title to the suit properties?
- (ii) Whether the description of the properties are correct ?
- (iii) Whether the suit property was purchased by the Plaintiff from his self acquired income?
- (iv) Whether the sale deed dated 18.05.1992 in favour of the Defendants is valid?
- (v) Whether the Plaintiff is in enjoyment of the suit property?
- (vi) To what relief the Plaintiff is entitled to?

5. Additional issues were also framed by the learned Principal District Munsif, Vridhachalam, which are as follows:

- (i) Whether the suit property was purchased on behalf of the joint family based on the income derived from the members of the joint family?
- (ii) Whether there was an oral partition in the family of the Plaintiff?

6. The Plaintiff examined himself as P.W-1 and documents were marked as Ex.A-1 and Ex.A-2. In support of the claim of the Plaintiff, two other witnesses were examined as P.W-2 and P.W-3. On behalf of the Defendants, Defendant-1 was examined as D.W-1 and documents in favour of Defendants were marked as Ex.B-1 to Ex.B-14. On assessment of evidence, the learned Principal District Munsif, Vridhachalam by judgment in O.S.No.487 of 2000, dated 29.08.2006 answered the issues in favour of the Plaintiff and



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decreed the suit against the Defendants.

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7. Aggrieved, the Defendants had preferred Appeal in A.S.No.149 of 2006 before the learned Principal Sub Judge, Vridhachalam. The point for determination before the learned Principal Sub Judge was – Whether the judgment of the learned Principal District Munsif, Vridhachalam, is perverse warranting interference by the Appellate Court?

8. After hearing the arguments of the learned Counsel for the Appellants (Defendants before the learned Principal District Munsif) and the learned Counsel for the Respondents (Plaintiff before the learned Principal District Munsif), the learned Principal Sub Judge by judgment in A.S.No.149 of 2006, dated 27.09.2007 on independent assessment of evidence available before the learned Principal District Munsif under Ex.A-1 and Ex.A-2 and Ex.B-1 to Ex.B-14 dismissed the Appeal and confirmed the judgment of the learned Principal District Munsif, Vridhachalam.

9. Aggrieved, this Second Appeal had been preferred by the Appellants before the learned Principal Sub Judge, Vridhachalam, in A.S.No.149 of 2006 raising the following substantial questions of law:

(a) Is not the suit deserves dismissal on the ground of non-joinder of



necessary parties since the Appellants' vendor was not brought on record?

(b) Is not the suit a limited one and deserves dismissal, as there was no specific prayer as to the invalidation or nullification of the sale deeds dated 18.05.1992 and 13.02.1995?

(c) Is not the Kartha of the Hindu Joint Family barred from exclusive ownership of the Joint Family properties?

(d) Was not the sale deeds dated 18.05.1992 and 13.02.1995, executed for a valid sale consideration, confer title over the suit schedule property?

(e) Was not the pattas, Cittas, adangal extracts and tax receipts issued by the Revenue Authorities are legal documents conferring a claim over the suit schedule mentioned property?

10. The contents of the written arguments filed by the Appellants are as follows:

10.1. The Respondent-1 had filed the suit against Appellants and Respondent-2 by suppressing the real facts. Further, the suit scheduled properties were purchased by the Respondent-1 out of the joint family income.

10.2. As per the oral partition, the joint properties have been divided as follows:

1. Ramalingam - S.No.200/2C (Periyathukurichi Village)
2. Ganesan - S.No.200/2A (Periyathukurichi Village)
3. Mani - S.No.200/2B (Periyathukurichi Village)
4. Palanimuthu - S.No.121/15 & 16 (Chinathukurichi Village)

10.3. The Appellants further submit that after allotment of shares, the brother of Respondent-1 namely Palanimuthu has transferred all revenue



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records and UDR patta in his name, which has been reflected in UDR from the year 1983. Thereafter, the brother of Respondent-1 Palanimuthu has executed a registered settlement deed on 20.09.1990 in Doc.No.1204/1990 to an extent of 25 cents in S.No.121/15 in favour of Respondent-2, namely, Malarkodi, who is none other than Palanimuthu's wife.

10.4. The Appellants submit that the brother of Respondent-1 had executed a registered sale deed on 18.05.1992 in Doc. No.537/1992 in favour of Appellant-1 in Survey No.121/15E and on 13.02.1995 in Doc. No.122/1995 in favour of 2nd Appellant in Survey No.121/15E to the extent of 7 cents and in survey No.121/16D to the extent of 18 cents. After that, all revenue records were transferred in the name of Appellants as per the valid title transferred through the above sale deeds. But the Respondent-1 wantonly suppressed the above facts and filed the present suit without disclosing his own brother's name and simply stated that the 1st and 2nd Appellants along with Respondent-2 created documents and obtained sale deeds and never disclosed that the above said Appellants were in possession but on contra, claimed that Respondent-1 was in possession.

10.5. The Appellants submit that the Appellants had purchased the property from Palanimuthu the brother of Respondent-1 after verifying the



revenue records and property was also sub divided. It was not at all challenged before the trial Court by the Respondent-1 as there was no specific prayer nor issues that were framed to invalidate or nullify the sale deeds conferring the title over the Appellants.

10.6. Cross examination of Karthikeyan P.W-3, who is a local resident, is as follows:

"வாதி குடும்பத்தலைவர் என்பதால் அவர் தான் குடும்பச் சொத்துக்களை நிர்வாகம் செய்து வருகிறார். குடும்பச் சொத்து முழுவதையும் அவர் அடமானம் வைத்திருக்கிறார்"

"வழக்குச் சொத்துக்கள் மற்றும் குடும்ப சொத்துக்கள் எல்லாம் பூர்வீக சொத்துக்கள்தான்"

Hence, it was categorically proved that Respondent-1 was functioning as kartha of family as per family partition, suit schedule properties were allotted to Palanimuthu the brother of Respondent-1. Palanimuthu only sold the properties for valid consideration, which was never disclosed by the Respondent-1/Plaintiff. It was contended by the Appellants that it was conveniently left out by the trial Court.

10.7. It is submitted that both the trial Court and the first Appellate Court ought to have taken note of a vital ground i.e., non-joinder of necessary



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parties and thereby ought to have dismissed the suit. Since the Appellants' vendor Palanimuthu was not at all added as a necessary party to the suit from whom the Appellants purchased the suit property to the extent of 33 cents and 25 cents, but the Respondent-2 who is also one of the beneficiaries of the said Palanimuthu who had obtained 25 cents through settlement deed was added as a party. It is further submitted that the suit schedule property in S.No.121/15 is a larger extent of landed property of 1 acre 66 cents. Out of the said extent of 43 cents and, in S.No.121/6 the extent of landed property was not known but to an extent of 21 cents was claimed by the Respondent-1, without any proper identification of property, without Advocate Commissioner report and without examination of any revenue records in his name. In blatant violation of the above said testimony, title was claimed in a total unlawful manner, without answering the Appellants title, boundaries and sub division survey No.121/15E and 121/16D (suit schedule properties mentioned survey No. is S.No.121/15 and 121/6) which are exclusively assigned to the Appellants.

10.8. It is submitted that the sale deed was executed on 18.05.1992 and 13.02.1995, and the suit was filed on 08.03.2001, thus surpassing the limitation period of 3 years. While he claims that he was in possession of the property, on contra Appellants were put in possession and for the said possession, the Revenue Department had issued the patta which was never considered by the



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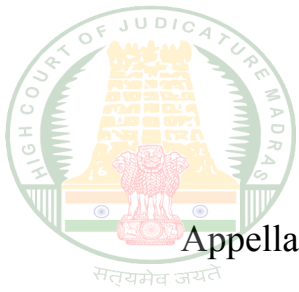
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trial Court. It was stated that the property was mortgaged during the year 1990

and it proves that the property was closely monitored by the Respondent-1.

The mortgaged property was earlier partitioned and allotted to his younger brother Palanimuthu and the sale deeds were executed by him in favour of the Appellants. It is submitted that as per Fasli year 1392 (1983-1984) onwards, the property stood in the name of Palanimuthu and more particularly for the Fasli year 1408 (1997-1998), it stood in the name of the Appellants' vendor Palanimuthu. There is no error in purchasing the family partitioned property as per law and thus they cannot be penalized for the whims and fancies of the Respondent-1. The suppression of material facts by the Respondent-1 was not considered by the trial Court.

10.9. It is submitted that the Appellants have lawfully purchased the said property and had sub divided the said properties i.e., S.Nos.121/15E and 121/16D and the Revenue Department had also issued patta for the Appellants after careful examination of transfer of title through valid sale deeds. However, the Respondent-1 alone came forward disputing the said transfer of title in the present suit, without sub division of property, suppressing the said fact and the existing position in the records of Revenue and Registration Department. Hence, the suit prayer itself is defective and ought not to have been granted by the trial Court and it ought not to have been upheld by the first



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11. It is the contention of the learned Counsel for the Appellants that the judgment of the learned Principal District Munsif is erroneous as though they had not properly appreciated the evidence. The Plaintiff had not sought any validation of the sale deed dated 18.05.1992 and 13.02.1995. As Kartha of the joint Hindu family, the Plaintiff is the exclusive owner of the joint family properties. The revenue records, Patta, Chitta, Adangal extract and tax receipts issued in favour of the Appellants in the Second Appeal/the Defendants before the trial Court was not considered by the learned Principal District Munsif as well as by the learned Principal Sub Judge, Vridhachalam.

12. In support of his contention, the learned Counsel for the Appellants relied on the following rulings:

12.1. In *AIR 2017 Supreme Court 1034* in the case of *Executive Officer, Arulmigu Chokkanatha Swamy Koil Trust, Virudhunagar vs. Chandran and Others*, the Hon'ble Supreme Court has observed as follows:

“36. The plaintiff, who was not in possession, had in the suit claimed only declaratory relief along with mandatory injunction. Plaintiff being out of possession, the relief of recovery of possession was a further relief which ought to have been claimed by the plaintiff. The suit filed by the plaintiff for a mere declaration without relief of recovery of possession was clearly not maintainable and the trial court has rightly dismissed the suit. The High Court neither adverted to the above finding of the trial court nor has



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set aside the above reasoning given by the trial court for holding the suit as not maintainable. The High Court in exercise of its jurisdiction under Section 100 C.P.C. could not have reversed the decree of the courts below without holding that the above reasoning given by the courts below was legally unsustainable. We, thus, are of the view that the High Court committed error in decreeing the suit.”

12.2. In **MANU/SC/0760/2020** in the case of **Raghunath (Dead) by legal heirs vs. Radha Mohan**, the Hon'ble Supreme Court has held as follows:

“Limitation – Right of Pre-emption – Exercise thereof – Sale Transaction – Enforcement of Rights – Sections 6 and 9 of the Rajasthan Pre-Emption Act, 1966 (Act) – Article 97 of the Limitation Act, 1963 – Plaintiff's suit for pre-emption over a transaction effected on 21st January 1974 was resisted on the ground of being barred by limitation – Whether the right of pre-emption can be enforced for a indefinite number of transactions or it is exercisable only the first time?

Held, while allowing the Appeals:

The right of pre-emption is only exercisable for the first time when the cause of such a right arises, in a situation where the Plaintiff-pre-emptor chooses to waive such right after the 1966 Act becoming operational. Section 9 of the said Act operates as a bar on his exercising such right on a subsequent transaction relating to the same immovable property. There also remained nothing of this right of pre-emption after so many years in the facts of this case when the purchaser has been enjoying it for more than four decades.”

12.3. In **MANU/TN/3401/2020** in the case of **M.Venkatachalapathy vs. C.Muthappan and Others**, this Court has held as follows:

“Property - Partition - Maintainability of Suit - Section 8(2) of Hindu Minority and Guardianship Act - Appeal filed against Order granting preliminary decree of partition of 1/3rd share to Plaintiff no 2 and dismissing suit in respect of Plaintiff No. 1 - Whether Trial Court was correct in holding that suit filed by Plaintiff No. 1 was not



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maintainable, without prayer to set aside sale deed executed by Court in pursuance of decree passed in earlier suit in favour of Defendant No. 1/purchaser Held, Plaintiff No.1 along with his sister, filed suit for partition was very well aware of pendency of earlier suit but he kept quiet all along - It showed that Plaintiff no. 1 had been a silent spectator in entire proceedings in respect of sale agreement Since Plaintiff No. 1 was a party in earlier suit as well as sale agreement, when he filed suit for partition along with his sister, he ought to have filed a suit for setting aside sale deed alleged to had been executed by Court of Law in pursuance of decree - Plaintiff No. 1 filed suit only for partition along with his married sister - Sale was not effected by father with permission of Court - It followed that sale in favour of Plaintiff No. 1 was rendered voidable under Section 8(2) of Act - In so far as documents in which minor children were made parties, they were bound in law to pray for setting aside same - Without such prayer, suit was not sustainable in relation to those documents - Trial Court considered all aspects in proper perspective and came to correct conclusion - Appeal dismissed.”

12.4. In **(2024) 2 SCC 661** in the case of **Rajendhiran vs. Muthaiammal @ Muthuayee and others**, the Hon'ble Supreme Court has held as follows:

“Contract and Specific Relief – Specific Relief Act, 1963 – Section 34 – Dismissal of suit for declaration based on oral partition – Validity – High Court ignoring oral and documentary evidence reversing concurrent findings of Courts below dismissing suit, recorded perverse finding that oral partition had taken place by relying on two sale deeds and one mortgage deed, which related to different pieces and parcels of land – Suit of Plaintiff, held, was rightly dismissed by Courts below.”

13. The contents of the written submission filed by the 3rd and 5th

Respondents are as follows:

13.1. The suit properties were self-acquired properties of the deceased Ramalingam the 1st Respondent herein. After getting the property, in the capacity of absolute ownership, Ramalingam had mortgaged the suit properties



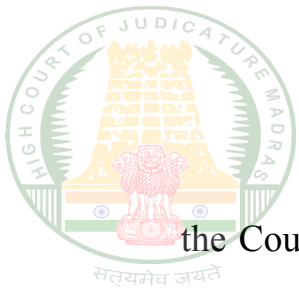
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with State Bank of India, Karuvepallamkuruchi branch. The mortgage in favour of the Bank and subsequent release of mortgage by the State Bank of India would disclose that the property rights were vested with the deceased Ramalingam. He has got the absolute right to deal the property in a manner, he desired. No share can be claimed by the Appellants from the self-acquired property. The Trial Court considered the issues and found that as per the sale deed dated 15.05.1982, the suit property was declared to be a self-acquired property and the deceased Ramalingam alone was found to be the owner. The Trial Court had also granted permanent injunction in favour of the deceased Ramalingam. All the issues framed by the Trial Court were answered in favour of Ramalingam after detailed discussions and First Appeal also ended in favour of the deceased Ramalingam.

13.2. Both the Trial Court as well as the first Appellate Court had given categorical finding that, there are no ancestral property rights enjoyed by the Appellants herein, and held that the documents created by the Appellants herein will not bind the Plaintiff. Both the Courts have held that the deceased Ramalingam alone is the owner and no other person have any rights or title in the suit property.

13.3. The documents adduced by the Plaintiff were proved before both



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the Courts and concurrent findings were rendered. The case of the Appellants and the documents adduced by them were disbelieved and rejected by both the Courts below. There is no convincing reason given by the Appellants warranting interference of this Court.

13.4. There is no substantial questions of law made out by the Appellants. Only factual matrix was drawn as substantial questions of law, which were already considered and rejected by both the Courts. The Respondents were suffering by the acts of the Appellants herein for the past 25 years and were unable to enjoy the property. Therefore, the present Appeal may be dismissed.

14. In support of his contention, the learned Counsel for the Respondents 3 and 5 relied on the following decisions:

14.1. In **(2003) 10 Supreme Court Cases 310** in the case of ***D.S.Lakshmaiah and another vs. L.Balasubramanyam and another***, the Hon'ble Supreme Court has observed as follows:

“A. Hindu Law – Joint family – Whether joint family property or self-acquired – Property cannot be presumed to be joint family property merely because of existence of a joint family – Burden to prove the property to be joint lies on the person who asserts so – But if he proves that the family possessed sufficient nucleus with the aid of which joint family property could be acquired, then presumption would be that the property is joint and onus would shift on the person claiming it to be self-acquired – On failure to establish the nucleus, held, burden



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of proof would remain on the person who asserts the property to be joint.”

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14.2. In **2024 (4) CTC 208** in the case of **R.Deivanai Ammal (Died) and another -vs- G.Meenakshi Ammal and others**, this Court has observed as follows:

“Hindu Law – Joint Family property – When members of joint family acquire property by their joint labour or joint business such property would be joint family property in absence of clear indication of contrary intention – Important aspect to be borne in mind is that contrary intention should not be available – Nucleus has to be established as a matter of fact and existence of such nucleus cannot be presumed or assumed on probabilities – Plaintiff claimed partition of suit properties left by her father and that all properties were self acquired properties of her father – Defendants claimed properties to be joint family properties – Evidence adduced disclosed that plaintiff's father hailed from weavers family and took to profession even in tender years and earned income – Evidence adduced by defense also corroborated said position – No evidence adduced to show existence of joint family nucleus – All properties stood in name of Plaintiff's father – Properties are self acquired properties and not ancestral properties.”

15. From the concurrent findings of the fact, the Substantial Questions of Law raised in this Appeal are not found to attract any Substantial Questions of Law. It is only questions of facts which cannot be considered in Appeal.

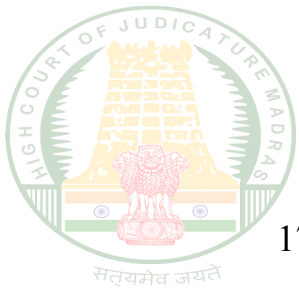
16. The reported decisions relied by the learned Counsel for the Appellants are not applicable to the facts of this case. As per the reported decisions of the Honourable Supreme Court as well as the reported decisions of



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the High Court of Madras, the revenue records are not documents of title. The question that the Plaintiff had not sought declaration of the sale deed as null and void cannot be a ground to reject the claim of the Plaintiff. It is the clear case of the Plaintiff that the Defendants had obtained sale deed from persons who did not have any title to the suit properties. The Defendants claim that the brother of the Plaintiff, Palanimuthu was allotted the suit property through an oral partition. If that be so, it is for the Defendants to prove the same by examining Palanimuthu or any other persons related to the Plaintiff who was witness to the oral partition. The oral partition claimed by the Defendants was not proved in the cross examination. The Defendant-1 examined himself as D.W-1 had admitted that he is neither an attestor nor witness to the claim of partition. He was not aware of the details of the ancestral nucleus from which the property was purchased by the Plaintiff under Ex.A-1. Under those circumstances, the claim of the Plaintiff that the Defendants created documents and attempted to dispossess the Plaintiff is found justified. Therefore, the contention of the Defendants that they had revenue records in their favour for possession of the property will not help the Defendants to succeed to the property of the Plaintiff. The Plaintiff had sought only declaration of title to the suit property claiming that the Defendants created documents and attempted to dispossess him.



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17. The reported decision cited by the Appellants in the case of ***M.Venkatachalapathy vs. C.Muthappan and Others*** reported in ***MANU/TN/3401/2010*** stated that the question was whether the trial Court was correct in holding that the suit filed by the Plaintiff was not maintainable, when it was filed prior to setting aside the sale deed executed by the Court in pursuance of the decree passed in earlier suit in favour of the Defendant-1/ Purchaser. Here, the Appellants as Defendants claim to have purchased the property from Palanimuthu, the younger brother of Plaintiff, when the sale deed stands in the name of Plaintiff Ramalingam the claim by Defendants that in oral partition, the property was allotted to Palanimuthu. The said claim of Defendants who are the Appellants in Second Appeal was not proved before trial Court. Therefore, the claim of Defendants was rejected. The property was purchased by the Defendants from persons having no title. The Defendants were unable to prove that there was an oral partition on that there was an ancestral nucleus for the claim that the purchase by the Plaintiff was based on the income derived from the ancestral properties. Therefore, this reported decision will not help the claim of the Defendants. Hence, rejected.

18. In the case of ***Rajendhiran vs. Muthaiammal*** reported in ***(2024) 2 Supreme Court Cases 661***, the High Court ignored the documentary evidence reversing the concurrent findings of the Courts below. The Hon'ble Supreme



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Court set aside the judgment of the High Court and restored the concurrent findings of trial Court and First Appellate Court. Here, the concurrent findings of the fact was not reversed by this Court which is proper and well reasoned judgment of the trial Court as well as the first Appellate Court. Further, this Court finds that there is no substantial questions of law that arise in this case. Therefore, the reported decision cited by the learned Counsel for the Appellants is not applicable to the facts of this case.

19. The reported decision in the case of ***Raghunath (Dead) by legal heirs vs. Radha Mohan*** reported in ***MANU/SC/0760/2020*** is regarding limitation and right of pre-emption. The claim of the Plaintiff in O.S.No.487 of 2000 regarding possession was accepted by the trial Court and the first Appellate Court. The claim made by the Defendants regarding purchase of suit property from the younger brother of Plaintiff Palanimuthu based on oral partition was not proved by the Defendants during trial. When the sale deed stands in the name of the Plaintiff, the claim made by Defendants that the suit property was allotted to younger brother of Plaintiff in oral partition, the said claim also not proved by examining Palanimuthu younger brother of Plaintiff. Therefore, the claim of Defendants to have purchased the suit property from the younger brother of Plaintiff was rejected by both the trial Court and First Appellate Court. The claim of limitation by the Defendants was also rejected



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by trial Court and First Appellate Court. Therefore, the ruling in ***Raghunath (Died) by LRs vs. Radha Mohan*** will not help the Appellants in this Second Appeal, the Defendants before the learned Principal District Munsif, Vridhachalam. Here, the Plaintiff had clearly stated that the Defendants attempted to dispossess him. Therefore, he has approached the Court within time from the date of knowledge. Therefore, the claim of limitation was not found acceptable by the trial Court as well as the first Appellate Court. However, what was not raised in the trial Court cannot be raised at this stage. Hence, the above ruling is rejected as not applicable to the facts of this case.

20. In the reported decision in the case of ***Executive Officer, Arulmigu Chokkanatha Swamy Koil Trust, Virudhunagar vs. Chandran and Others*** reported in ***AIR 2017 Supreme Court 1034***, the Plaintiff had in the evidence stated that the original documents of the Plaintiff is under the custody of the Bank from where he had obtained loan for putting up bore well and was unable to repay the amount which was still pending. Under those circumstances, the claim of the Defendants based on revenue records that they are in possession cannot be accepted. The reported decision of the Appellants will not help him. The Plaintiff was able to prove his claim by marking Ex.A-1 and Ex.A-2 which were accepted by the learned Principal District Munsif as well the learned Principal Sub Judge.



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21. The learned Counsel for the Respondent relied on the reported decision in *(2003) 10 Supreme Court Cases 310* in the case of *D.S.Lakshmaiah and another vs. L.Balasubramanyam and another* and *2024 (4) CTC 208* in the case of *R.Deivanai Ammal (Died) and another -vs- G.Meenakshi Ammal and others*, there is no presumption in law regarding joint family property. In the case in O.S.No.487 of 2000, the claim of the Defendants is that they had purchased the property from Palanimuthu based on oral partition in the family of the Plaintiff, whereby the property devolved on the Defendants' vendor Palanimuthu when the sale deed of the property stands in the name of Plaintiff in the suit, the Defendants claim that they purchased the same property from the younger brother of Plaintiff, the same property was allotted in the oral partition to Palanimuthu, the younger brother of the Plaintiff. The said contention of the Defendants in the written statement was not proved through the evidence of the Defendants during trial. The so-called vendor of Defendants Palanimuthu, the younger brother of Plaintiff was not examined as a witness before the trial Court to prove the claim of Defendants regarding oral partition regarding ancestral nucleus. They were unable to prove such contention in the written statement as per Sections 102 and 103 of the Indian Evidence Act. The claim of joint possession in the name of the joint family and the claim of partition is to be proved by the person who makes such



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pleadings. The Defendants were unable to prove it in evidence. Therefore, their evidence was rightly rejected by the learned Principal District Munsif and upheld by the learned Sub Judge. Therefore, this reported decision cited by the learned Counsel for the Plaintiff as Respondent in Appeal is found acceptable and is applicable to the facts of this case.

22. In the light of the above discussion, **no substantial questions of law arise for consideration in this Second Appeal warranting interference by this Court.** Hence, this Second Appeal is to be dismissed as having no merits at the admission stage itself. It is to be noted that the Second Appeal was dismissed already as against the Respondent-2, wife of Respondent-1. Under those circumstances, this Court cannot hear or pass orders in favour of the Appellants.

In the result, **this Second Appeal is dismissed at the admission stage itself.** The judgment and decree dated 27.09.2007 passed in A.S.No.149 of 2006 by the learned Principal Sub Judge, Vridhachalam confirming the judgment and decree dated 29.08.2006 passed in O.S.No.487 of 2000 by the learned Principal District Munsif, Vridhachalam, is upheld. No costs. Consequently, connected miscellaneous petition is closed.



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Index : Yes/No

Internet : Yes / No

Speaking/Non-speaking order

To:

1. The Principal Sub Judge,
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2. The Principal District Munsif,
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