

AS.No.285 of 2020

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2025

CORAM

THE HONOURABLE MR.JUSTICE M. JOTHIRAMAN

AS.No.285 of 2020
and C.M.P.No.3921 of 2020

G.Shanthi

... Defendant No.7/Appellant

Vs.

1.Anjalam
2.Jothi
3.Vijay
4.Thangadurai
5.C.Velayutham
6.C.Murugesan
7.C.Shanmugam
8.S.Kanagaraj
9.V.Sangeetha
10.S.Sudarvizhi
11.C.Manikandan

... Defendants/Respondents 5 to 11

Prayer : This First Appeal is filed under Section 96 r/w. Order 41 Rule 1 Code of Civil Procedure 1908, against the judgment and decree dated 31.08.2018 passed in O.S.No.73 of 2011 by the II Additional District Court, Salem.



AS.No.285 of 2020

WEB COPY

For Appellant : Mr.D.Govinda Reddy
For Respondents : Mr.S.Kausik
for Mr.K.Sathish Kumar
for R1, R2, R4 to R6 and R11

J U D G M E N T

The unsuccessful seventh defendant has preferred this appeal against the judgment and decree dated 31.08.2018 passed in O.S.No.73 of 2011 by the II Additional District Court, Salem.

2. The parties are referred to according to their litigative status before the trial Court.

3. The suit is filed for declaring that the sale deed dated 28.03.2011 executed by the defendants 3 to 6 in favour of the seventh defendant is null and void and not binding and to pass preliminary decree to divide the suit property into six equal shares and allot 3/6 shares to them and separate possession thereof.

4. The trial Court decreed the suit and passed a preliminary decree for partition by allotting 3/6 share in the suit property to the plaintiffs and



AS.No.285 of 2020

WEB COPY

the eighth defendant together. It was also declared that the sale deed dated 28.03.2011 is not void, but it will not bind the shares of the plaintiffs in the suit property and it is valid only in respect of share of the third defendant in the suit property.

5. The brief case of the plaintiffs is as follows:-

The suit property belonged to one Chinnusamy Padayachi and he purchased the same from one Kamalamammal and it consists of four items. He has got three sons, namely, the defendants 1 to 3 and two daughters, namely, the second plaintiff, Jothi and one Indiragandhi, who died about 10 years ago leaving behind the plaintiffs 3 and 4 as her legal heirs. The defendants 4 to 6 are the son and daughters of the third defendant. The said Chinnusamy Padayachi died intestate about 25 years ago leaving behind the plaintiffs 1 and 2 and another daughter, Indiragandhi and the defendants 1 to 3 as his legal heirs. The plaintiffs and the defendants are enjoying the property jointly without any hindrance. The defendants 3 to 6 have executed a registered sale deed dated 28.03.2011 in favour of the seventh defendant. The said sale deed



AS.No.285 of 2020

WEB COPY

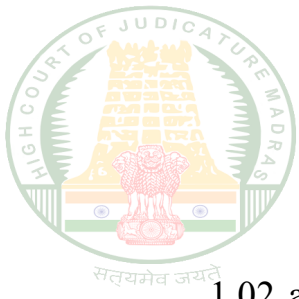
is not valid and the alleged oral partition mentioned in the document is false. Hence, the suit.

6. A written statement was filed by the second defendant and was adopted by the first defendant as follows:

It is true that the suit property belonged to Chinnusamy Padayachi and after the death of Chinnusamy Padayachi, the plaintiffs 1 and 2 and the defendants 1 to 3 are entitled to each 1/6th share and the plaintiffs 3 and 4 are together entitled to 1/6th share. They have no objection to pass the judgment and decree as prayed for by the plaintiff.

7. The brief case of the seventh defendant is as follows:-

The husband of Indiragandhi has not been added as party and hence, the suit is bad for non-joinder of necessary party. The suit property is the ancestral joint family property of the defendants 1 to 3. After the demise of Chinnusamy Padayachi, the plaintiffs 1 and 2 and Indiragandhi orally relinquished their share and thereafter, the defendants 1 to 3 partitioned the suit property under oral partition. In the oral partition, the third defendant was allotted 1/3rd share and he sold



AS.No.285 of 2020

WEB COPY

1.02 acre and 1/3rd share in the well along with 1/3rd share in EMP set fitted with the well situated in S.Nos.105/1A1 and 106/6B, at Kolathukombai Village, Valapaddy Taluk, in favour of the seventh defendant under the sale deed dated 28.03.2011. Eversince, the seventh defendant is in possession and enjoyment of the suit property so purchased by him. The seventh defendant is a *bonafide* purchaser of the property. There are two thatched sheds and one tiled house in the suit property and they are not shown in the description. Hence, the plaintiffs are not entitled to any share.

8. The seventh defendant by way of an additional written statement has stated that the plaintiffs have not added the ancestral joint family property. Further, Chinnusamy Padayachi died in the year 1984 and succession got open even in the year 1984 and therefore, only Section 6 of the Hindu Succession Act applies and the suit is barred by limitation. The defendants 1 to 3 divided the suit property under the oral partition in the year 1987. The third defendant sold the property with specific boundaries to the seventh defendant. Hence, he prayed for dismissal of the suit.



WEB COPY

9. Based on the above pleadings, the trial Court has framed the following issues:

- (i) Whether the plaintiffs are entitled to a share in the suit property?
- (ii) Whether the plaintiffs 1 and 2 and Indiragandhi orally relinquished their share in the suit property?
- (iii) Whether the seventh defendant is a bonafide purchaser for value?
- (iv) Whether the plaintiffs are entitled for the relief of partition as prayed for?
- (v) Whether the plaintiffs are entitled to the relief of declaration that the sale deed dated 23.08.2011 is null and void or not?
- (vi) To what relief, if any, the plaintiffs are entitled to?

10. During trial, on the side of the plaintiffs, the second plaintiff/Jothi was examined as P.W.1 and the third plaintiff/Vijay was examined as P.W.2 and Ex.A1 to Ex.A3 were marked. On the side of the



AS.No.285 of 2020

WEB COPY

defendants, the eighth defendant/Shanthi was examined as D.W.1 and one Poomalai was examined as D.W.2 and Ex.B1 to Ex.B7 were marked.

11.The findings of the trial Court:

Ex.A1/Sale deed stands in the name of Chinnusamy Padayachi and in the absence of any other evidence, it is his absolute property. The seventh defendant pleaded that the suit property was purchased from the sale proceeds of the house in the ancestral property, but the same has not been established by the seventh defendant. The seventh defendant claimed that there was an oral partition in the year 1987. However, the defendants 1 and 2 have not raised any objection to the claim made by the plaintiffs. The oral partition plea taken by the seventh defendant has not been established. Ex.A2/Sale Deed executed by the defendants 3 to 6 in favour of the seventh defendant is not binding on the plaintiffs insofar as their 3/6 shares in the suit property is concerned.

12. The points for determination arises in this appeal are that

(i) Whether the plaintiffs 1 and 2 and Indiragandhi orally relinquished their share in the suit property?



AS.No.285 of 2020

WEB COPY

(ii) Whether the plaintiffs are entitled to the relief of declaration that the sale deed dated 23.08.2011 is null and void?.

13. The learned counsel appearing for the appellant/seventh defendant/purchaser would submit that P.W.1, in her cross-examination categorically admitted that the suit property was purchased out of sale proceeds of the ancestral property of her father and therefore, the suit property is to be considered as ancestral property. P.W.1 in her cross-examination admits that her brothers were cultivating the lands allotted to them in the oral partition and hence, the said admission made by P.W.1 is a conclusive proof for oral partition made between the plaintiffs 1 and 2 and the defendants 1 to 3. The case of the seventh defendant is corroborated by the evidence of D.W.2 who is aged about 61 years and resident of the same Village and adjacent land owner of the suit property. Though the second defendant has filed the written statement which was adopted by the first defendant supporting the case of the plaintiffs, but none of the defendants comes forward to give evidence. P.W.1 in her cross-examination categorically admits that there was an oral partition. The evidence of P.W.1 itself clearly reveals that



AS.No.285 of 2020

WEB COPY

there was an oral partition and on that basis, the plaintiffs and the defendants 1 to 3 were enjoying their respective share and the third defendant along with the son and daughters sold the property to the seventh defendant and therefore, the seventh defendant is a *bonafide* purchaser of the suit property. Hence, he prayed for allowing this appeal.

14. Per contra, the learned counsel appearing for the respondents submits that the suit property is an absolute property of Chinnusamy Padayachi and after his death, the plaintiffs 1 and 2 and the defendants 1 to 3 became entitled to each 1/6 share and the plaintiffs 3 and 4 are together entitled to 1/6th share in the suit property. The alleged oral relinquishment and the oral partition in the sale deed were not established by the seventh defendant. There is no reason to interfere with the judgment and decree of the trial Court.

15. This Court has considered the submissions made on either side and perused the materials available on record.



AS.No.285 of 2020

WEB COPY

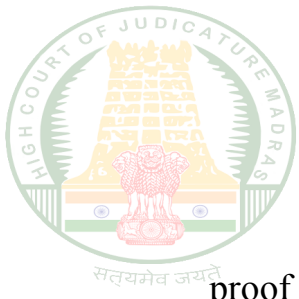
16. It is not in dispute that one Chinnusamy Padayachi has got three sons, by name, Velayutham/first defendant, Murugesan/second defendant and Shanmugam/third defendant and two daughters, by name, second plaintiff/Jothi and one Indiragandhi. The plaintiffs 3 and 4 are the children of Indiragandhi, through her husband, Manikandan/eighth defendant. The defendants 4 to 6 are the son and daughters of the third defendant. It is the specific case of the plaintiffs that the suit property is the absolute property of Chinnusamy Padayachi and the same has been purchased under the sale deed dated 20.03.1974 and after his death, the plaintiffs 1 and 2 and the defendants 1 to 3 became entitled to each 1/6th share. The plaintiffs and the defendants 1 to 3 are in joint possession and enjoyment of the suit property. It is also not in dispute that the defendants 3 to 6 have executed the sale deed dated 23.08.2011 in favour of the seventh defendant in respect of a portion of the suit property. The suit property consists of four items in Kolathukombai Village, Valappady Taluk, Salem District, measuring to a total extent of 4.39 acres. The defendants 1 and 2 filed their written statement admitting the claim of the plaintiffs. The defendants 3 to 6 and 8 remained *ex-parte*.



AS.No.285 of 2020

WEB COPY

17. The seventh defendant is alleged to be a purchaser of the suit property and has chosen to contest the suit. According to the seventh defendant, the suit property is the ancestral property of Chinnusamy Padayachi and from and out of the sale amount, he had purchased the suit property. It is also the specific case of the seventh defendant that after the death of the said Chinnusamy Padayachi, the plaintiffs 1 and 2 and Indiragandhi relinquished their share and there was an oral partition in the year 1987. As per the oral partition, the property was divided into three shares and one share was allotted to the third defendant, who, in turn, sold his share to the seventh defendant. Per contra, P.W.1/Jothi stated that the oral relinquishment alleged to have been made by the plaintiffs 1 and 2 and Indhiragandhi and also the oral partition as claimed by the seventh defendant are false. Ex.A1, sale deed dated 20.03.1974 stands in the name of Chinnusamy Padayachi with regard to suit schedule property which was purchased from one Kamalamammal. Initial burden lying on the plaintiff has been discharged and now the burden of proof shifts on the seventh defendant to prove his case. It is pertinent to mention that in legal maxim “reus in excipiendo fit actor”, the burden of

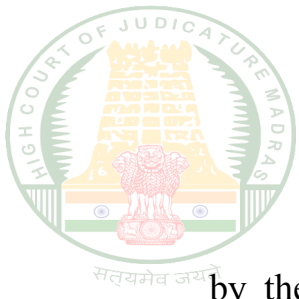


AS.No.285 of 2020

WEB COPY

proof weights on the plaintiff, but the defendant in objecting becomes as plaintiff. A maxim means that, when the defendant denies the plaintiff's offer of proof, the burden of proof shifts on the defendant to refute the plaintiff's evidence.

18. The seventh defendant has relied upon the oral evidence of D.W.2, to prove his case that the suit schedule property is an ancestral property and the plaintiffs 1 and 2 and Indiragandhi relinquished their share and there was an oral partition in the year 1987. D.W.2 who is the neighbouring land owner of the suit property, has stated that the seventh defendant is a *bona fide* purchaser of the property from the third defendant. However, the seventh defendant has not chosen to file any documents to show that the suit property was purchased from the sale proceeds of the house in the ancestral property. Apart from the evidence of D.W.2, no other independent witness is examined to establish that there was an oral partition in the year 1987. The defendants 1 and 2 have not raised any objection to the claim made by the plaintiffs. The third defendant has not entered the witness box to support the case of the seventh defendant and also to speak about the oral relinquishment made



AS.No.285 of 2020

WEB COPY

by the plaintiffs and their sister. The seventh defendant has failed to prove the oral relinquishment and oral partition alleged to have been made by the plaintiffs 1 and 2 and their sister along with the defendants 1 to 3. The burden of proof has not been discharged by the seventh defendant. The suit schedule property has not been partitioned in the manner known to law.

19. In view of the above circumstances, Ex.A2/Sale deed as alleged to have been executed by the defendants 3 to 6 in favour of the seventh defendant is not binding on the plaintiffs insofar as their share is concerned. There is no need to declare that the sale deed is null and void as it is valid only with respect to 1/6 share of the third defendant. The trial Court has rightly answered the issues. In view of the above, there is no reason to interfere with the impugned judgment and decree of the Court below. There is no merit in this appeal and the same is liable to be dismissed. The points are answered accordingly.

20. In the result, this Appeal Suit is dismissed and the judgment and decree dated 31.08.2018 passed in O.S.No.73 of 2011 by the II



AS.No.285 of 2020

WEB COPY

Additional District Court, Salem is confirmed. There shall be no order as to costs. Connected miscellaneous petition is closed.

01.07.2025

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

ssb

To

The II Additional District Court,
Salem.



WEB COPY



AS.No.285 of 2020

M. JOTHIRAMAN, J.

ssb

AS.No.285 of 2020

01.07.2025